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Vol. III

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 798

THE DENVER UNION STOCK YARD COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

FILED FEBRUARY 14, 1938.

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VOL. III

INDEX.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLORADO

THE DENVER UNION STOCK YARD COMPANY, a Corporation,
Plaintiff,
vs.
UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Defendants.

IN EQUITY
No. 10913

ABSTRACT OF EVIDENCE

VOLUME II
RESPONDENT'S TESTIMONY

RECORD STOCKMAN PUB. CO.,

INDEX TO SUBJECTS

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

INDEX TO EXHIBITS

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

INDEX TO WITNESSES

[Vol. I of Abstract, pages 1 to 291 inclusive.]
[Vol. II of Abstract, pages 292 to 820 inclusive.]

Trans.

THE CASE FOR RESPONDENT

CHARLES W. PACE, a witness called by the respondent, testified as follows:

I am a farmer, feeder and stock raiser at Longmont, Colorado. I first commenced in that business in Missouri, but have been in the feeding business for 27 or 28 years in Colorado.

1040 My average number of head in the last four or five years has not been as much as further back, but I have run around 400 and 500 head of cattle. There are about four carloads to each hundred head. I have a sheep capacity of 6,000 head and a few years ago I was feeding with Richard Mitchell and we had run around 5,000 and 6,000 head. The year they knocked us in the creek we had over 11,000 head. Now I have no producing herd of cattle,—just sheep. At one time I think I had the best herd of white-faced cattle in Colorado.

1041 Yes, I patronize the Denver market both as a shipper and a buyer, and have patronized it ever since I have been in this country. I don't see how the livestock industry in the West could get along without the Denver market. I buy the majority of my feeders at Denver and I very seldom ship anything elsewhere unless it is some very heavy cattle. Pretty near everything I sell comes to Denver. Denver does not use as heavy cattle as Chicago. Denver uses just as heavy cattle as the river and it is just as good a market. Yes, the Denver market fixes the price of livestock in this region. We try to buy our stuff as near as the Denver market and sell it that way, and that is what we use out here. I refer to when we buy or sell direct.

As to the Stock Show at Denver, I have not missed a one since it was built. We all think it is a benefit to the industry as a whole. It just seems to get Show benefits industry as a whole.

a lot more buyers together and a lot more cattle, and it seems every year that the cattle have been improved and more sales and more buyers, and I have heard it said many times that Denver is the best feeder market of any town or place anywhere, produces more good cattle, more good feeders, sold here in the Stock Show than any other one market. Yes, the same thing refers to bulls. It just looks

Show brings buyers.

1043 as though there were buyers here from everywhere and there always seemed to be stock for everybody. Sometimes it might run a little short like anything else, and maybe a little long, but not very much. The buyers come from a great many States and buy the livestock by the carload and maybe more. Yes, I think the Stock Show has been influential in bringing buyers to this part of the country and advertising our livestock, because, as we look at it, we are always waiting for the Show to either buy feeders, if we want them, or have them to sell. The same way with bulls and the same way with horses. It just seems that it is a place to get together and do business. I think it is very valuable. If you want to buy any amount of stock I just don't know where you would go to pick it up. I believe there would be a way to do it but it wouldn't be nearly as convenient as to come right where it is and where you can see it all. Yes, I generally have livestock

1044 for sale at the Denver show, and I have also sold quite a little at my home place to yard traders who come up there and buy them. Yes, I have come in contact and gained a patron several times at the Show. I recollect at one time I bought a train load of cattle out of Cimarron, Oklahoma, and entered two cars in the Show, and it was either an Iowa or Illinois feeder that bought those cattle and they won three prizes. He wanted to know if I had any more as good as them and I said I had some more of the same kind, probably not quite so

good and I took him up to the ranch and sold him five or six carloads or more of cattle of the same string. I had 520 of them.

Increased business due to the show.

I would say that there was an increased business at the Denver yards due to the show because during the Show week it looks as though everything was full. Yes, from my observation I would say that bulls are sold in the yard, apart from the hill or Show property, during Stock Show Week as a result of the Show and because the Show is there. There is no argument about that because people come there during Stock Show Week in order to purchase these bulls because they know they are going to be there. The same is true as to feeder livestock and horses. Then there are fat cattle and pure-breds on exhibition that are sold at the Show and always figure to bring $1.50 or $2.00 a hundred more than they would on the open market at any other time of the year.

Livestock would not come except for the show.

1045 As to the statement that all this livestock would come to the market in any event at some later time, I do not think so. I wouldn't think it would be really safe for the producer, the shipper, to come at any time whether there were going to be any buyers there or not. I wouldn't know how they would turn out, because they have increased in number the cattle and number of buyers all these years right along up to the present time. I don't know how it would be if they would come in here with these bulls and nobody would know they were coming, what they would do with them. It is a sort of get-together proposition. If there were not a Show probably they would go to some other place where they had a show.

1046 When I first knew the market back in about 1905 the old Exchange Building was there but there was nothing on the hill in the way of a horse market.

Trans.

The hog pens were just back of the old Exchange Building and there was an old brown colored hotel northeast of where the new Exchange Building is now, and the first thing you went through, you had to go through the hog pens, just a little row of hog pens there, and the sheep were yarded in a little shed down west and a little handful of yards back of the hog sheds. The outlet for livestock was

Growth of market.

1047 very small because they couldn't take care of but very few and it just kept getting bigger and they kept building more room until it got to where it is at the present time; it has grown steadily all the time. I recollect men on the yards at the time they had 10,000 cattle and they didn't know what in the world they would ever do with them all, and I remember several years back I was on the market when they had 15,000. The chute and scale pens and everything else were full and you couldn't sort cattle and you couldn't move cattle or do anything to them until they got the congestion out of the way.

Yard Trader beneficial.

Yes, the shipper to the market is interested in the outlet for his livestock, certainly. He sends it there for sale. Yes, he is interested in the number of buyers, for the more buyers you have the better price you always get.

Shipper wants buyers.

1048 Yes, the trader is a buyer on the market and I have been on the market several times when the trader was all the market we had. Yes, I think I am familiar with the operations of the traders on the Denver market and the place they fill. I did business with them for years. No, it would not be of any benefit to the shipper either to restrict the number of traders or to handicap the trader in his operations. There are a lot of them that can hardly

Effect of half yardage charge on traders.

1049 make a living the way it is. My opinion is that the trader, if any additional burden is put upon him,

Trans.

in order to handle this stock would have to take it off the producer in price.

Q. Now, there has been a good deal of talk in these rate cases, Mr. Pace, concerning what in the 1930 hearing here was called, or in the decision of the Secretary in the 1930 hearing was called a half-yardage charge to traders, and in certain other cases it has been called a reweigh charge; for example, instead of a charge of 35c a head on fat cattle, adult cattle, I should say, the trader was to be charged, say 15c. Do you think any charge of that sort, irrespective of the amount, would be detrimental to the market outlet at Denver?

A. Well, I have talked to some of the boys—we have talked back and forth over this matter, and I have heard several of them say that if it was taxed onto them, they were going to quit, that they couldn't stand it.

Believes such charge detrimental to the market.

Q. And do you think that to have them quit would be detrimental to the market?

A. I would say that to a certainty.

Q. You would say to a certainty?

A. Yes, sir.

Q. Now, as a patron of the market, are you desirous that the yard company should do all it possibly can to increase the outlet for your livestock?

Yard company should do all it can to increase outlet.

1050 A. I would; certainly that would be a betterment.

Q. And you believe it is for the betterment of the industry and the benefit of the industry, do you, for us to exert every effort to increase the demand for livestock on the Denver market?

Trans.

A. I would think that would go along with making a better market out of it.

Buying outlet includes all who absorb livestock.

Q. And in increasing the demand and the outlet, that includes, does it not, packers, dealers, order buyers or any other factor that may absorb the livestock which comes here for sale. Isn't that what you mean?

A. Yes, sir.

Need for sheep shearing outlet.

(Witness continuing). As a sheep feeder I have shipped lambs to Montgomery, which is a feed lot or feed yard out of Chicago for shearing and sale. Yes, I think it would be of benefit to me and the other feeders if there was a sheep-shearing layout at the Denver market because they have got them in Kansas City, St. Joe, Montgomery and Omaha
1051 —I am not sure about Omaha. I don't see why there wouldn't be advantage here; there are more lambs fed in this territory than in any other territory that I know, and it would be close, a short ship and less death loss to get to the shearing pens. I don't see how it wouldn't be an advantage. Our climate is the best there is for lamb raising. I don't know the exact percentage compared to the rest of the United States, but our territory is the best feeding country there is. Yes, the shipper likes to feel that he is within striking distance of his lambs when they are sold, and the Denver market is within striking distance of all this feeding section.

Cross Examination.

Trader Operations.

1052 I don't know how many cattle are bought by the traders every year at the Denver market. I know there are a lot of them. The cattle bought by the traders are bunched up and sorted and classified to suit the different trades and different customers that they have got and shipped to different places

Trans.

where they belong. As I see it, that is the way they do with them. They buy a string of cattle of all ages and types and the like of that, and classify these cattle, and they have customers who have given them orders to ship these cattle wherever they want them to go. It would be just a guess for me to try to say how many of these cattle bought by the traders are resold on the Denver yards. These traders have orders throughout the country to feed-
1053 er buyers in northern Colorado and Nebraska and Kansas and they ship a lot of them out that way, and then they have other customers who are coming in here and taking a small profit on their purchase. There are very few of them that are sold through the commission men again. The traders are a benefit to the producer and shipper because they buy anything that comes in and which the packer wouldn't touch at all. Somebody has got to do that. If you didn't have your trader I wouldn't know where to go sometimes. Yes, the trader must dispose of that livestock somewhere. Commission men don't find that same market. Yes, if my cattle sent in one day were sold to a trader and then put back onto the Denver market the next day, they would come into competition with my cattle sent in the second day, or with other cattle of some other shipper, but there is very little cattle that doesn't go through the commission men's hands. The trader pretty nearly always takes care of his own business
1055 that he does. Yes, the farmer who actually feeds the cattle will come in and buy cattle from the trader and the same day there may be a bunch of feeder cattle in the pens of the commission men.

Traders often order buyers.

Traders beneficial.

Trader competition with fresh arrivals.

Q. Then, the cattle in the pens of the trader will come into competition with the cattle in the pens of the commission men?

1056 A. Well, it would if he has not got them all

sold. If he has got any left over it might come in contact with fresh arrivals.

Q. And would there not be, then, competition between the trader cattle, that is cattle owned by the trader now, and the cattle shipped in by the producer or feeder?

A. Well, I have never seen the time that they have congested or anything in any manner at all.

Q. But you do admit that they come in competition with each other?

A. Well, if they have got some on hand it is certain that they would be there, as I say, even though they pretty near always have got orders for their cattle they know where they are going to send them.

Trader often only market.

(Witness continuing). Yes, I have seen days when the trader was the only market. The majority of these traders' cattle are all on order, they know what they are going to do with them when they buy them or where they are going; they are not bought to be put back through the commission men
1057 on sale again, except in very few cases. No, I don't make a distinction between the order buyer and the trader, they run in the same, they are the same people because the trader buys to sell again.

I have always found it better for me to buy a heavier steer, a more matured steer with the feed that I have got. I feed pulp, syrup, cut hay and ground chuck grain and ensilage and the like and the weightier steer will put on a lot more pounds and make a better steer quicker than the young steer. I feed a heavier cattle than the fellow who feeds grain. The average steer that I send to the Denver market will average around 1200 pounds and the price this year may be 12½ to 13½c per

Trans.

pound. Last year I sold some at $8.00, $8.20, $7.25 and $7.35 a hundred. Three years ago I sold some
1058 1500 pound cattle, as good as any that are grown, for $4.25 a hundred. Yes, there are certain classes of traders that buy steers of the type I have mentioned. At 13½c a pound the sale price of a 1200 pound steer is somewhere around $156.00. As to whether or not a charge of 15c on a $156.00 steer would make any difference to the trader, you have got a lot of traders on the market that do not buy fat cattle, they handle feeder cattle and stock cows and breeding cows and classes of that kind and there are just a few of the bigger, stronger traders that handle fat cattle. 15c would not make any
1059 difference if the cattle made money, but if the trader lost money, it would make just that much difference. Yes, if they lost money any charge would make a difference. When I said the traders would leave the yards if there was a charge put on them, I am just telling you what the conversation was out there in the lobby of the Exchange Building, talking it over among ourselves, and George Ray, one of the boys out there, said that if they ever put on a charge he was going back to the ranch, and there are others who made the same remark. I do not know what they will do, but am just telling you what they
1061 said they would do. Oh, I wouldn't say that they would leave the yards, but I would say that in their purchase price they would in some way protect themselves to overcome this charge; they would take it off the cattle they bought; they would cover it up someway. We figure that the traders out there on certain classes of cattle really make the market.

Trader viewpoint.

Charge would be passed back to shipper.

As to whether the Denver yards do not open up until after the river yards and the Chicago yards open up, that applies to fat cattle and fat lambs. The traders trade any time they get a customer. I

Trans.

understand the Denver yards open up for business
1062 at 8 o'clock. The Chicago yards open at 8 o'clock and there is an hour difference in time. I wouldn't say that the commission men in Denver find out the Chicago and river market prices before they offer anything for sale, because I know a lot of times if they think they are getting the worth of them, they just sell them. In my judgment the Chicago and river markets make no difference in the stock cattle or feeder cattle or stock cows or anything of that kind. The Chicago and river markets only affect the price of fat cattle coming to the packers, and if we assume the market on fat cattle takes a decided jump it will influence the market on beef. Yes, if any of the traders are going to buy my fat cattle and ship to the river he will see what the market is, but I don't see where it affects these stock cattle or feeder cattle at all except that if fat cattle came up it might make the feeders a little stronger.

Chicago and other markets only affect Denver price on fat stuff.

1063 I don't know that the trader can sell for any better price than the commission man, but as I see it there are two sections. The commission men have got your fat cattle to sell, and it is their business to look after them and the trader buys the trader
1064 end of the cattle, which can be either feeders or stock cattle. Oh, yes, the commission men sell quite a few feeder cattle in these yards and make the first sale where the trader buys.

Stock Show.

With regard to the Stock Show, yes, I have access to the various educational sources, such as County agents, newspapers, magazine articles, etc. on the breeding of livestock, but I don't know that you get very much intelligence from the County agent on the breeding of livestock. No, I wouldn't go so far as to say that the stock shows were solely responsible for the improvement in breeds but would

Trans.

say that they are responsible for a majority of it. I would say that the decided improvement in the
1065 breeding of cattle first made itself manifest in Colorado when they began to get together at the Stock Show and exhibit their herds and one fellow sees where another fellow has made an improvement and talks the thing over and sees where he could make a betterment, and from time to time just that way. The first show in Denver I think was either 29 or 30 years ago, and prior to that time there was pretty nearly every kind of cattle that there is produced
1066 in Colorado with the old-time style of breeding. I think our first stock show here, *as I recall it*, was held in a tent, and it has just got bigger and better all the time. It looks like it would be a good thing, all right. Yes, I would honestly think the stock show is a benefit to the stockyards as an organization. The stockmen all over the country regard it as a get-together time. We all try to have something to sell and if we want to buy, we go there
1067 to buy it whether it be feeders, breeding cattle or registered bulls. I handle quite a few horses, always have horses to sell at the Stock Show and invariably buy quite a little bunch. I know there are a number of stockyards of major importance in the country that do not have stock shows; probably the location would make a lot of difference, that is, whether they had the feeders and the registered cattle that they have got out here in this
1068 country. Yes, I have put feeders in the Stock Show but generally I have not done very much of that because I put cattle in the feed yard and finish them out.

Show improved cattle.

It is a pretty hard question to say how many cattle come into the Denver yards on account of the Stock Show that would not otherwise come. I couldn't tell you as to how many or anything of that kind, but we think that the receipts are very

Increased receipts due to show.

Trans.

largely increased, but as to the amount, I wouldn't want to say. I think your records of receipts at the yards would give you that more accurately than I could guess it. Yes, I have personally found the
1069 Stock Show valuable to me. I have always found out that I have got a good price, a better price at the Stock Show. We always have more buyers and more excitement and in that way we feel it made us all better sales. Then, if there were any good bargains in feeder cattle, why, you could be there to take advantage of it. It certainly reflects itself in dollars and cents to me. As to whether it could be worked out that when I take advantage of the Stock Show there would be a charge for it, it would appear to me that we are paying about all we can for what we get and I wouldn't think there would be any chance to put on any more. Yes, it is natural to believe that there would be some patrons of the Denver yards who wouldn't show at the Stock Show and who don't come to the Stock Show to either buy or sell, but then it is largely attended by people who do come for that purpose. No, I don't know the attendance nor the number who
1071 patronize the Denver yards by either buying or selling.

Stock Show beneficial.

It is my understanding that if he does not come here and if he does not patronize the Show nor buy any cattle, he wouldn't have anything to pay.

Re-direct Examination.

As to whether or not the man who does not come to the Show derives any benefit, there might be two
1072 ways to answer that question. It might be on this one particular shipment or something like that he wouldn't derive any benefit from the Show, but as he is a producer the chances are that he has been at the Show and maybe bought some breeding stock or some registered bulls or something like that,

Show benefits the industry.

Trans.

and if he did, he would get the benefit from it. People get ready for the Show for some months before in the Fall and buy cattle and take them north in the beet country and put them on beet plants, and the cattle on the range are gathered to send to the Show because there are feeder buyers from a lot of other adjoining States here to buy feeders. We have buyers that do quite a business at all times, but as I say, at Stock Show time we
1073 have got feeder buyers of good stock cattle, buyers that don't ship any cheap stuff East, but there are just a lot of them Stock Show week that buy cattle when they all come in here.

Increased number of buyers at show.

The movement of range cattle is pretty well over about the middle of December. Whether it is any earlier than that depends on the fall of the year. The shortage of grass and the weather has a good deal to do about that and the shippers have got to take them down to the meadows and take them some place else, and that movement is pretty well over by the 1st of December. As to cattle on the feed lots, quite a number of our short fed Northern cattle come before April but the long fed cattle would be coming into the market about the 1st of
1074 April. The short fed stuff starts coming in about March 1st. No, I wouldn't think that, except for the Show, January would be any larger in cattle receipts than December.

January receipts would be same as December but for show.

Yes, from my knowledge the way the traders operate at Denver is very largely as order buyers. Yes, I said that competition for livestock generally meant better prices, but I don't think that the small amount of competition which may come from trader reselling on the market hurts the shipper in the
1075 long run. We have different types of traders out there which everybody knows that is acquainted with the market. We have got some people that

Trader competition not hurtful.

Trans.

handle the good cattle and make a specialty of that; then we have another class of trader that handles the cheaper class of cattle, and then we have another trader that handles nearly all calves and has orders for all the calves that come, and that is the way it is handled. They never handle fat cattle unless the packer buyer lays down on the commission man and the trader buyer thinks there is a little margin in these cattle to buy them and ship somewhere else. That happens once in a while, but that is the only time they handle any fat cattle. The rest of it is all feeders and stocker cattle. Yes, in those instances the trader operates to hold up the prices to the benefit of the shipper.

Trader tends to stabilize price.

(Witness excused).

1077 Barclay Ivins, a witness called by the respondent, testified as follows:

Qualifications.

I have been in the real estate business over 24 years, most of the time specializing in the handling of business property exclusively. I am a member of the Denver Real Estate Exchange, which is affiliated with the National Association of Real Estate Boards. I am a director of the Denver Real Estate Exchange and have served as a member of its Business and Industrial Property Appraisal Committee, and also as general chairman of that committee. For several years I managed some of the most important business blocks on 16th Street, which is the retail business district of the City of Denver. I have also managed property on 17th Street, which is our financial district. There is hardly a block on 16th Street in which I have not negotiated one or more leases of retail property and also many on 17th Street.

24 years experience in business property.

Appraisal experience.

As to my industrial property experience, for the past 18 years I have handled a great many trackage and industrial properties, and during the past

Industrial or trackage property experience.

Trans.

ten years have probably made more deals of trackage property than all other real estate offices in Denver put together. Some of the firms for whom I have made industrial property deals are the General Electric, the Graybar Electric Company, which is a subsidiary of Western Electric, the Westinghouse Electric & Manufacturing Company, the Goodyear Tire & Rubber Company, the Pittsburgh Plate Glass Company, the Continental Oil Company, Libby, Mc-Neil & Libby, Armour & Company, U. S. Radiator Corporation and many others. There are others that I could name that are not industrial properties but they are with representative industrial concerns and pertain to property off of tracks, such as the B. F.
1079 Goodrich Company, the Gates Rubber Company, which is on track, Kelly Springfield Tire Company, the Texas Company, Standard Oil of Indiana, and other oil companies, the Atchison, Topeka & Santa Fe Ry. Co., and I should also state the Union Pacific, for which I have had numerous deals and where I have both appraised and purchased property for them. I assembled between six and seven blocks for the Union Pacific under option for a market scheme they had. I have managed and am managing properties for several banks and have also made business property deals for officials of large
1080 banks in Denver. I now handle property for the Provident Mutual Life and for the New England Mutual. I have been engaged on several occasions to buy property for the Safeway Stores Corporation, and also to appraise property for them.

Q. Now, have you made any sales of industrial property recently so that you know or feel the current situation with respect to them?

A. During the past month I sold the corner of 26th and Market Streets to the Union Pacific Railroad Company. I sold two lots next to the corner of 25th and Market Street to the Mine-

Trans.

hart-Traylor Company. I am not revealing any —or not revealing any confidence I should not when I say I am right now at the point of closing a large deal for the Safeway Corporation that has been generally talked about by them, so I feel perfectly at liberty to state that. I am making a sale to them of six lots next to their present plant at 21st Street and Market Street.

Q. Now, Market Street, is that trackage property?

A. That is trackage property with the joint tracks of the Union Pacific and Burlington Railroads serving it.

A. And it is in the general direction from the city toward the stockyards area, is it?

A. It leads toward that area.

1082 (Witness continuing). I have been recently called upon to appraise the real property of The Denver Union Stock Yard Company in association with Messrs. L. F. Eppich and H. W. Newcomb, or Harry Newcomb. I was notified by Mr. Shoemaker, president and general manager of The Denver Union Stock Yard Company on February 25, 1935, to serve as one of their appraisers, and started work the following day with Messrs. Eppich and Newcomb, at which time we met with Mr. Shoemaker and received our instructions to proceed and then we began the work of appraising the stockyards property. The method which we followed is best outlined, I feel, in our letter in which our appraisal report was made to the Stock Yard Company. Yes, I have prepared a written report of our findings as a board, and have signed that as one of the members

1083 of the board.

(Witness was handed a document marked "Respondent's Exhibit No. 3." Witness continuing).

Trans.

This is the written report concerning which I have just testified. It expresses my opinion as a member of the board of appraisers, though I have one exception where my opinion differs from that of Messrs. Eppich and Newcomb. It is my personal opinion, which was outvoted by the other two members of the board, so I signed the report.

The letter of transmissal stating our method and the elements of value which we considered is as follows:

1084 "Denver, Colorado, March 23, 1935.

Mr. J. A. Shoemaker,
President and General Manager,
Denver Union Stock Yard Company,
Denver, Colorado.

Dear Sir:

As requested by you, we have after careful investigation and analysis of the properties involved, appraised the lands of The Denver Union Stock Yard Company as follows:

Zone No.	Number of Acres	Value per Acre		Value of Each Zone
1	3.6	$15,000	$54,000	
	34.934	17,500	611,345	$665,345.00
2	23.190	15,000		347,850.00
3	19.825	8,000		158,600.00
4	16.382	12,000	196,584	
	2.340	10,000	23,400	219,984.00
5	12.640	3,500		44,240.00
6	3.383	10,000		33,830.00
7	4.608	4,500		20,736.00
8	0.759	10,000		7,590.00
9	7.081	20,000		141,620.00
10	2.303	2,500		5,757.50
Total	131.045			$1,645,552.50

In arriving at above values we personally inspected all the lands of the Company, giving consideration to their proximity to related and other industries and to various features having a bearing on their adaptability and desirability for industrial uses, including those of a stockyards company. These influences are set out in the following pages:

We compiled a list of sales of properties in the neighborhood of the stockyards, personally inspecting these properties, checking insofar as deemed neces-
1085 sary, with grantors and grantees the considerations involved. These transactions are described in detail on the accompanying sales sheets. Thereupon we appraised each Zone, giving what we consider a conservative value thereof. The following factors were weighed by us in making our valuations:

Location The yards are located in the north end of the City, the Exchange Building being less than three miles from the main Post Office. Their northern boundary is the City limits. They are conveniently accessible to the business district of Denver over paved streets, the most direct route being via Brighton Boulevard and Broad-
1086 way Viaduct.

Topography Not only does the topography of this land lend itself to industrial development, including stockyards use, but the gravelly soil is an advantage that contrasts with the adobe soil of other districts.

Sewerage and sanitation The Platte River affords excellent sewerage facilities due to its passing directly through the length of the stockyards district.

Transportation Excellent street car and bus service between the stockyards district and the City of Denver is furnished by the Denver Tramway Company. Bus lines to all parts of Colorado and adjoining States are available. Six railroads serving the stockyards, with their connections, offer

rans.

the best of transportation for livestock and products of the packing houses. Truck lines radiating from Denver supplement the railroads and serve the richest irrigation districts in Colorado. Completion of the Dotsero Cut-off brings much of Western Colorado within easy reach of Denver and has lessened the time of transit by about fifteen hours on cattle trains. Much livestock that heretofore went East via the Pueblo gateway is now diverted to Denver by reason of the saving in time effected by the Cut-off. This area is connected with the paved and improved highway system of Colorado, reaching all producing sections of the State. Mr. Charles D. Vail, Colorado Highway Engineer, states that the following highway improvements affecting transportation in Denver have been completed in the last five years:

aved
oads

087

> Limon Road from Burlington, Colo. to Denver paved. Livestock that formerly went to Omaha and Kansas City can now be brought into the Denver stockyards at high speed over this good road. $1,000,000 was spent on this road.
>
> Route No. 36 from the cattle country north of Burlington has been greatly improved. The Julesburg road has been surfaced and oiled, and $500,000 spent on the road from Wiggins to Denver. This road enters Denver at the north end of Colorado Boulevard.
>
> The Trinidad-Denver Road has been oiled or paved with concrete from the New Mexico line to Denver.
>
> The Wray-Sterling-Holyoke Roads into Denver have been improved at a large expense.

Trans.

1088 *Labor and Housing* The area appraised is favorably located as regards a dependable supply of labor, within easy walking distance, in both Elyria and Globeville. The districts are mostly made up of attractive small homes which are rented at moderate rates. Supplementing these home districts are good schools, churches, playgrounds and a branch library.

Protection The City of Denver maintains a Fire Department Station at 47th and Brighton Boulevard, the short distance from the stockyards assuring best of protection against fire. Radio equipped motor police patrols give this district the same protection as other parts of Denver.

Zoning The stock yards district is the only part of Denver zoned for business of this character. When the city was zoned in 1925, this question received the special attention of the Zoning Commission and of E. M. Bassett and Robert Whitten, authorities of national prominence, who served as consultants in the preparation of the Zoning map and ordinance. It was their unanimous opinion that stock yards and other nuisance industries should be confined to the north end of the city, so that smoke and offensive odors would be carried away from the City, our prevailing winds being from the south.

Allied Industries The industries in this district, in addition to the packing houses, are, in the nature of things, related to the stockyards business and are
1089 mutually beneficial, forming an intense, though specialized, industrial development. Among these industries are:

Trans.

Armour & Company
Swift & Company
Cudahy Packing Company (formerly Blayney-Murphy)
K. & B. Packing & Provision Company
Capitol Packing Company
Pepper Packing & Provision Company
H. & M Packing Company
Local Beef & Mutton Company
Colorado Animal By-Products Manufacturing Company
Union Rendering Company
Colorado Serum Company
Denver Hog Serum Company
Purina Mills
Mountain States Mixed Feed Company
Also many feeding lots

Other Industries

Continental Oil Refinery
Burlington-Colorado & Southern Shops
Intermountain Elevator Company
Eaton Metal Products Company
Oil Distributing Plants

To the north of Denver are many sugar factories, whose by-products offer advantages for the feeding of cattle and sheep.

Growth of Denver

The constant growth of Denver has added to its importance as an industrial center, particularly from the standpoint of the livestock industry, assuring stability to the value of the Company's lands. This growth is evidenced by the following figures furnished by the Secretary of the Denver Union Water Company, Mr. George F. Hughes:

Water Taps

In January 1930 68,137
In January 1935 70,352

School Registration

The Denver School Board in its February, 1935, report states that "pupil membership has 717

Trans.

increased consistently year after year * * * *
1090 During the past five years average daily membership has increased 5,173. The figures for these years are as follows:

"1929-1930	50,127
1930-1931	51,613
1931-1932	52,730
1932-1933	53,282
1933-1934	54,350
1934-1935	55,300"

Census

The 1930 census showed Denver to have a population of 287,861

Annual surveys of the Denver University School of Commerce, based on house-to-house checking of the City by districts, shows Denver's population in 1935 to be.... 302,000

The 1930 census gave Denver's Metropolitan District a population of 330,761

Denver University School of Commerce estimates, without a house-to-house check of territory outside city limits, that the Metropolitan District in 1935 has a population of 347,000

In view of the foregoing factors that enter into the value of a tract of land such as The Denver Union Stock Yards—its location, its proximity and accessibility and the further fact that there is no other tract of land so favorably situated and of equal size available for stock yards purposes—it is our opinion the valuation we have placed on these lands is conservative.

Very truly yours,

(Signed) L. F. Eppich
" Harry W. Newcomb
" Barclay Ivins

Appraised as vacant land.

(Witness continuing). The last signature is my signature. We appraised the land as vacant land,

Trans.

stripped of all improvements but with the packing houses and other related industries and surrounding
1091 utilities there. The tracks owned by the carriers themselves were considered as means of access to the stockyards. As to the trackage owned by the Stock Yard Company we considered the land but not the trackage. We gave no consideration to the fact that there were sewers in place and water systems in place on the stockyards property. We disregarded all sub-surface and all surface improve-
1092 ments.

Surface & sub-surface structures not considered.

Extent to which assemblage value included.

I have read Mr. Zelinski's appraisal and report and heard Mr. Zelinski testify both on direct examination and on cross-examination.

We added nothing to our appraisal for assembly value in dollars and cents as a distinct item. We did give consideration to the fact that it is a large unified tract. We checked what I would term similar property and property not similar though com-
1093 parable. When I say "not similar" I mean not similar as to value, but at the same time we figured that it had a comparative basis to consider as an element of reaching our opinion. In Zone 1 we had to go outside of the stockyards district to find lands comparable. We found none that I considered of a similar or equal value but we figure that those lands reflected the values in Zone 1. Some of those sales also applied to the land in Zone 9. There were other lands such as the Union Pacific industrial district which we did not consider as similar and yet it offered a basis for comparison with lands in Zones 6, 7 and 8.

Zoning Ordinance.

As to the weight we gave to the zoning ordinance, this district is practically the only district in the city, I should say that it is the only district in the city, that is zoned for business of the character of
1094 the stockyards. Elaborating on the factors as enum-

Trans.

Land suitable for other uses.

erated in our letter, there were four particular features that had application to a stockyards above, I figured, other factors. One was the topography. We found that satisfactory for any industrial use, practically, not alone for stockyards, but for, say, steel mills, for railroad yards. There is a particular feature there in regard to railroad yards that is not existent anywhere else in Denver. In other districts where the railroads have their yards, they are put to the expense of building either viaducts or subways or, rather, contributing toward that expense where it is shared with the city. In the stockyards district a railroad could use those yards and have practically no expense to contribute to by reason of the construction of subways or viaducts. There is no necessity for it. When the Union Pacific wanted to close several streets that led across their yards, I believe they contributed to the expense not only of the Broadway viaduct but of the 38th Street subway as one of the considerations by which the city let them close up these streets, so that this yard, that is, the stockyards lands, have a varied utility. However, we figured that the stockyards was its highest and best use. The zoning feature is absolutely vital because without the zoning permission from the city, the stockyards could not be established in the city limits. There is no other part of the city except the north end that is zoned for that. The railroad facilities are ideal, more so than in any other part of the city. The other outstanding feature is that the packing houses are all located either immediately contiguous or immediately surrounding the stockyards property.

Murphy Barn.

1095 (Witness continuing). *Referring to zone 5 and* counsel's discussion with Government witness Zelinski concerning the sale of the so-called Murphy barn, that sale is listed as our sale No. 2 and is Government sale No. 21 on page 78 of the Govern-

Trans.

ment appraisal. The facts with regard to that sale are that the property fronts 250 feet on Humboldt Street and 125 feet on 47th Avenue and was deeded by F. B. Hollis on April 23, 1924, to Mr. Joseph P. Murphy as grantee, the legal description being Lots 15 to 24, Block 2, West Elyria. The consideration was $22,000. Elyria is a sub-division of the city of Denver, as is Globeville. Of the consideration of $22,000, $6,000 is represented by the value of the
1096 improvements and $16,000 the naked value of the land. Mr. Zelinski in the Government appraisal has the land value and the improvement value figures transposed. He shows the value of the improvements at $16,000 and the value of the land at $6,000. Mr. Murphy tells me that there has been no change since the barn was built in 1915. It has not been added to or subtracted from. I did not discuss with Mr. Murphy the subject of repairs, but it is pretty evident that there have been no repairs because the building is in a sad state of neglect. I think it is perfectly apparent that Mr. Zelinski was wrong in using a land value of $6,000 on which to base his value in Zone 9, and as I recall his testimony, he indicated that if he were shown that he had transposed these figures, it would have an influence in changing his value of the land in Zone 9. The value we placed on the land in Zone 9 was $20,000 per acre. Mr. Zelinski appraised it at $15,246 per acre, and I believe if he gives due consideration to his error in transposing, he will bring up his value on Zone 9 even to or in excess of our value.

Correct figures should increase Zone 9 values.

1098 Yes, I listed topography among the elements of value which we considered. As to the freedom from [illegible] and flood menace, I would say that is a decided element of value in appraising land of this nature.

(The witness was asked to state from his observation and inspection and experience his opinion con-

Trans.

cerning the Local Beef and Mutton tract, the Hanks Feed Lot, the H. & M. Packing plant tract, etc. as to their comparability and the effect upon his values of the consideration paid for those tracts by the owners).

Local Beef & Mutton tract.

(Witness continuing). Starting with the Local Beef & Mutton Plant the Government appraiser is in error in stating that the per acre cost is $3,000. The original sale is listed in our sale No. 32 and occurred on December 17, 1920, for a total consideration of $3,350 for 1.34 acres. On October 18, 1922, or about two years later, the Local Beef & Mutton Company bought a similar tract adjoining the first on the north at the same price per acre. I think they must have felt there was a value of $2500 an acre in the land or they wouldn't have gone back and bought it. Comparing that land with the stockyard land from the standpoint of floods, two weeks ago we had a flood and I went out to the stockyards but I could not get to the Local Beef & Mutton because the bridge was partly out and the road leading to it was flooded. Yesterday I went out to the Local Beef & Mutton Company and employees informed me that water had gotten into the building to a very minor extent. The yards, however, had all been covered by water in the flood and some of that water is still standing two weeks

Subject to flood.

1100 later. The employees said that they had suffered no loss of livestock in this flood because they had driven the sheep they had in the pens up to the second floor of the packing plant. They had ample notice that the flood was coming down. Two years ago in the flood they had about 85 sheep in their pens, of which 18 were drowned and the others were standing up against the wall with just their noses out of the water. Of the 85 sheep about half died either as the result of drowning or exposure in the flood.

Trans.

I then went to the Hanks feed lot, talked to the **Hanks feed lot.**
1100-a Superintendent and found that their yards were largely flooded two weeks ago and the water still standing over a large area of it. He stated that they had suffered very disastrously in the flood two years ago, both in the loss of livestock and in loss of the value of the product when flooded due to exposure.

I could not get to the H. & M. Packing Company
1101 because the road was still flooded from the Hanks **H. & M. Packing Co. Tract.** feed lot. I reached the property by retracing my steps and going down Race Court around Brighton Boulevard and coming around from the other end. The H. & M. Company told me their land was decidedly under water. I inspected them the morning after the flood. The H. & M. Company had had warning that the flood was coming and put their cattle in trucks and hauled them down to the stock yards where they were safe from the flood menace.

Mention has been made by Mr. Zelinski of the sale of land to the D. & S. L. Railroad. The lands were bought, I believe, in 1915 and they suffered from this last flood.

There was none of the land of the Stock Yard **Stock Yard Co. land not flooded.** Company flooded during this flood two weeks ago or is subject to flood menace unless you consider about 10,000 square feet of Zone 3 which actually runs down into the river bed of the Platte River, but after you eliminate that 10,000 feet in the river bottom, all of the land of the stockyards is decidedly above any possible flood menace. Yes, I mean, when
1102 I speak of the land in the river bed, that when you take the metes and bounds description of the property comprising Zone 3, a corner of it is actually in the river channel, and I estimate that small corner to be about 10,000 square feet.

Zone 5, which is the tract across the river, is **Zone 5.**

Trans.

not in the least subject to flood menace. It is nice level land above any flood menace. Bearing in mind the price of $2,500 an acre paid by the Local Beef & Mutton Company for land in 1920 and 1922, it is my opinion that the land in Zone 5 is of much
1103 greater value. We, as a board, placed a value of $3,500 per acre on Zone 5. Yes, we found that since 1930 Washington Street was curbed and surfaced and the curbing and surfacing was assessed October 3, 1931, at $1,773.22 against Zone 5. The oil surfacing was covered by general taxation and done by the highway department. The Stock Yard Company actually paid $1,587.03, which I take it was the original sum of $1,773.22 less the discount for paying in full, under the Colorado Statutes. The street was again oil-surfaced in 1931.

More valuable than Local Beef and Mutton tract.

There were several sales that were considered in arriving at our valuation on Zone 5. One was a tract of 7.29 acres purchased by the city of Denver from the K. & B. Packing Company on January 8, 1927, for use in connection with the straightening of the channel of the South Platte River. The consideration was $26,600; the land is a little south but not adjoining Zone 5,—I should say about 700 feet south of the south line of Zone 5 on the west side of the official channel of the river. We reached the value of $3,648 per acre for the land the city bought which at that time was subject to overflow. This was obtained by dividing the number of acres into $26,600. The government figure was $3,237 because of an old bridge which was removed and the Government allowed a credit on that account. Mr.
1104 Newcomb and I called on the K. & B. Packing Company, and Mr. Sam Sigmund, one of the officers of that company, verified the consideration involved in the transaction and stated that they value their land between four and five thousand dollars an acre at this time. Another sale is our sale No. 6, Gov-

Comparative sales sustain higher value.

Trans.

ernment sale 120 of .846 acres from the Ruedy Products Company to the City and County of Denver for the purpose of straightening the channel. That land is north and east of Zone 5 and practically adjoining. Then there is a sale from the Ruedy Products Company to Meyer and Dave Averich on March 10, 1926, involving 1.13 acres, the consideration being $3,120 less $200 for improvements or a total naked land value of $2,920, or $2,584 per acre. This last tract of land, Mr. Zelinski testified, had a frontage on Washington Street, of about 10 feet.
106 As a matter of fact this land comes to a point at Washington and 50th Avenue. There is a 10 foot strip reserved for ingress and egress to the Ruedy Packing plant but that 10 feet disappears before you get to Washington Street because the tract comes to a point.

107 All of these sales to which I have referred are sales considered in reaching our valuation of Zone 5 and were prior to the establishment of the official channel.

Any effect of depression offset by channel improvements.

Mr. Sam Kaminsky, an officer of the Capitol Packing Company, the present owner of the tract, told Mr. Newcomb and me that he values the land at between $6,000 and $7,000 an acre, and I feel, therefore, that we are very conservative in our value of $3,500 per acre. Yes, I recall Mr. Zelinski's testimony that he thought this land was peculiarly affected by the depression, but I think any effect
108 of the depression has been more than offset by the building of the new dikes confining the Platte River in the enlarged channel and eliminating the danger of the floods, and also the improvements on Washington Street would be considered an asset.

Zone 4.

Zone 4, like all the rest of the stock yards property, except the 10,000 feet I have referred to, is above any flood menace. About 16.382 acres are

Trans.

very well filled nice level land which we appraised at $12,000 per acre. There are 2.34 acres that re-

Topography.

quire some filling or leveling at the northern end of Zone 4. It is being filled now and we gave a
1109 value of $10,000 per acre to that part. Yes, we gave a value of $3,500 per acre to Zone 5, and our reason for the increased value in Zone 4 is that it immediately adjoins the stockyard Zone 1, which is the most intensively used part of the land as a large industrial tract. It is ideally located for switching facilities, both the center and the extreme end. Yes, I am looking at it from the standpoint of a large industrial tract of which this zone is an integral part. Zone 4 has a decided increase in value over
1110 Zone 5 because Zone 5 is separated from the main body of the tract by the river. Zone 5 has no accessibility to rail transportation, while Zone 4 has ideal rail facilities. Now the Government ap-

Government value not sustained.

praisal of Zone 4 is $2,500 per acre and I see no reason in that. To begin with it is close in, it adjoins the Armour and Swift plants and it is immediately contiguous to the sheep and hog barns, the most intensively used part of the stockyards, and I cannot see the line of demarcation where it would drop from even the Government's figures in Zone 1 of $8,500 an acre abruptly to $2,500 an acre in Zone 4. It has availability for stockyards rails or for any railroad
1111 service by way of industrial side-tracks. It is so tied in with the larger tract that it has ideal accessibility from the main carriers.

Zone 3.

Zone 3 comprises 19.825 acres lying north of Zone 2, from which it is separated by Race Court. If we deduct the 10,000 square feet, or approximately one quarter of an acre in the river channel, it leaves
1112 19.575 acres in this zone. We appraise Zone 3 at $8,000 per acre, or $158,600. This value is supported by lease No. 22, which is a lease from The Denver Union Stock Yard Company to the Union

ans.

Pacific Railroad Company under date of October 27, 1924, covering 9200 square feet of right-of-way and the rental is based on a land value of $8,772 per acre. Also our sale No. 38 from the Northwestern Terminal Railroad to the City and County of Denver is actually only an easement and we gave little weight to that sale. Of the land in Zone 3 13.645 acres are similar in character to the land in Zone 2, being practically on the same level. The remaining 6.188 acres are somewhat broken, lying higher and would require leveling. The gravel on this land can be sold to more than pay the cost of leveling. This land is needed for expansion as busi-
13 ness of the stockyards increases. Access is had to this land by Race Court from the east and from the west it joins with Franklin Street. I do not regard Race Court as a permanent hindrance to the expansion of pens to the area north of Race Court for the reason that the City Planning Commission four or five years ago went on record as favoring the moving of this street to the north limits of Zone 3, that is, between it and Fairmount Cemetery. Yes, this tract has the same relative availability to good labor supply and fire protection and lies within the industrial B zone of the zoning ordinance. Yes, it has rail accessibility from the Burlington Railroad on the east and the Northwestern Terminal
14 to the west. There is also a Union Pacific track into the territory used by all the railroads. Yes, in valuing this tract we considered that it can be made an integral part of the main large industrial tract without any break.

Race Court not a permanent hindrance.

Zone 6.

Zone 6 comprises 3.383 acres lying between 46th Avenue and the Colorado & Southern right-of-way, the Burlington right-of-way and the plant of the Pepper Packing Company. On this land is located the road leading from 46th Avenue into the stockyards and to the Armour and Swift plants. The

Trans.

land is required for future railroad switching facilities. Adjoining this land on the west, the Burkhardt Packing & Provision Company sold to the Western States Packing Company on June 16, 1928, as per our sale No. 9, a tract which Mr. Burkhardt stated to me and to Mr. Newcomb personally
1115 they valued at $10,000 per acre. Mr. Burkhardt also made both oral and written offers to The Denver Union Stock Yard Company to buy land next to this parcel and in Zone 6 at $10,000 per acre.

Zone 7.

Zone 7 comprises 4.60 acres south of 46th Avenue and between the Burlington right-of-way and the Platte River. We placed a value of $4,500 per acre, or $20,736 for the tract. There are several sales which are comparable to this tract and which we have listed. One sale from the American Smelting & Refining Company to the City and County of Denver, which sale was at the rate of $1,220 per acre and was one of the most fortunate real estate deals that the city ever engaged in. It is the site of an old smelter and one covered with slag which the city desired for paving. Mr. Simonson, the Government witness in 1930, testified that this land had more value even when the slag was removed
1116 than the city had paid for it. The National Fuse & Powder Company bought 1.132 acres on August 9, 1929, from the Union Pacific Railroad Company for $4,000. This is our sale 33 and Government
1117 sale 46-A. This price figures $3,532 an acre and the land has no access to any street. The land is very rough and to reach it from 38th Street would require about a 20 foot fill in an arroyo. The land has no rail connection. Contrasted with Zone 7, Zone 7 is on a main highway, whereas the land bought by the National Fuse & Powder Company is entirely surrounded by other property. I think Zone 7, by reason of the proximity to the Platte River, is saved from any future flood menace and

rans.

that that would offset any effect of the depression.

As regards Zone 6, I figure that this land is so
close to the main body of the stockyards that it
is not affected by the depression. You do not have
to cross any streets to get to it. Also in Zone 7,
when the Stock Yard Company parted with some
land to the city for the widening of 46th Avenue, it
reserved the right to cross 46th with rails, either
at grade, above grade or below, so that Zone 7 has
accessibility to this large industrial tract. At the
present time Zone 7 is not served by any railroad
but the rails can be brought in very easily there.
Zone 6 has both the Colorado & Southern and Burl-
118 ington abutting on it.

We appraised Zone 9 at $20,000 per acre. We Zone 9.
felt that there were ample sales close by to prove
that our valuation was correct. Those sales are
referred to at the bottom of our zone sheet No. 9,
but you must also refer to sales listed under Zone
1 for the values or for the sales we used to support
this value. Some of the lands that we recite to
support it on sales sheet 9 are comparable but not
of similar value. I refer to the sales that went
119 into the Union Pacific tract, but under Zone 1
there are several sales that are very highly indica-
tive of the values we placed on the land in Zone
9. For example, our sale No. 1, Government Ex-
hibit A-4, page 262, which is the sale of lots 29 to
46, block 3, West Elyria, from Hollis-Platte Horse
Company, grantor, to The Denver Union Stock Yard
Company, grantee, August 13, 1919, total consid-
eration $75,000 of which $50,000 was for improve-
ments and $25,000 for the naked land, or $19,340
per acre. Yes, that sale was in 1919 and the city
has increased in size, and I believe this land has
also increased in value since that time. There is
no question in my mind about it. Then there is

Trans.

sale No. 3, or Government sale 24, pages 82 and 83, which is the sale of two lots in block 3, West Elyria, to the Drovers National Bank. The naked land value of the two lots was $17,500 out of the total consideration of $47,500. This gives a square foot value of $2.80, or an acreage value of $121,960. These check with the Government figures. I might say that we would not take that sale as indicative of the value of the tract, because this is a corner on 27th and Lafayette and it reaches the peak of value there. However, it serves to show that land
1120 is very valuable in that neighborhood. Yes, the first sale I referred to of lots 29 to 46, block 3, West Elyria, is the land which is included in Zone 9, the horse and mule division, and is on the east side of Lafayette Street between 46th and 47th Avenues. Zone 9 is very close to what you might term the main entrance to the stockyards, although I do not know whether you would consider it the main entrance because it is possibly of equal importance with the road leading into the land from the south. A large portion of the traffic going from the city goes immediately by Zone 9 under the Burlington tracks and into Zone 1. This land
1121 as compared with Zone 1 is where I differ from Mr. Eppich and Mr. Newcomb. I considered the land in Zone 1 to be of equal value if not greater value than the land in Zone 9 because the land in Zone 1 is in the very heart of the stockyards district. Mr. Zelinski indicated in his testimony that he used the center of Zone 1 as the peak of values and that going north and going south he found a diminishing land value. He testified that where the viaduct leading to the Blayney-Murphy plant crosses Zone 1 was the center of trading activities. To Zone 1 he gave the value of $8,500 per acre, yet to Zone 9 he made an exception and gave a value of $15,246 per acre, or $6,746 per acre more than

Trans.

he gave to Zone 1. He did say that if he were shown that he had transposed his figures regarding the Murphy barn sale, he would increase his values of Zone 9. Mr. Zelinski attributed his higher values in Zone 9 to the fact that it had retail possibilities.

1122 Mr. Zelinski was undoubtedly influenced by the same factors that influenced Messrs. Eppich and Newcomb and myself in fixing the values in Zone 9, namely the sales of similar property located nearby. I feel that he should correct his figures covering Zone 1 if he believes, as he testified, that the railroad facilities are better in Zone 1 and trading activities reached their peak in Zone 1. I can go down in Zone 1 and show you greater retail value if The Denver Union Stock Yard Company used a portion of Zone 1, you might say, for its retail utility rather than for its use as a stockyards and to create a market. It would be the same if

1123 any other owner used that part for retail purposes. There was a hotel in Zone 1 until the Stock Yard Company wanted to use the land for stockyards purposes and cancelled the lease. The proprietor went up and bought land near Zone 9 and erected what is now known as the Ward Hotel. He didn't do that because he wanted to or because it was a superior location. He did it because it was what he considered the next best location; in other words, if you were to put small stores down in Zone 1 I feel that they would command a better rent than the same sized stores facing Lafayette Street in Zone 9, and it is on that basis, when I consider the superior trackage advantages, the proximity to the large packing plants, that I personally feel that Zone 1 has an equal if not superior value to the land in Zone 9.

As to Zones 1 and 2, judged from the industrial use standpoint, the land is very similar. Zone 2 is equally adaptable for industrial purposes as the

Zones 1 & 2.

Trans.

land in Zone 1. However, it is a little further removed from the peak of trading activities and I figure it has a slightly diminished value as related to Zone 1, but for the purposes of utility it is just as ideal as Zone 1.

Real Estate Values recovering.

1124 Yes, I have testified that I have made sales of industrial properties recently and real estate values of this property have largely recovered in Denver. About 1932 or 1933 there were many distressed properties that were thrown on the market and they sold with no relation to their real value. Two lots on Market Street between 25th and 26th were sold two or three years ago for $1,200 or $600 apiece, an absurdly low value. That figures approximately $6,500 an acre. I sold two lots recently in the same block within the past month for $5,000, or $2,500
1125 a lot, that is about 80 cents a square foot. One block away I sold four lots for the same price I sold in 1922, but the owner has tried to negotiate loans and I regard that more or less in the nature of a distress sale. On Market and 21st Street I appraised six lots for the Safeway Company last
1126 winter and I sold three of those lots for $3,000 apiece. They were vacant. Giving regard to the depressed conditions and figures that were quoted me elsewhere, I appraised those lots at $2,750 each for the raw land. I was asked to do that. The grantor would not consider that and the sale is going through at a considerably increased price, showing no subtraction from the normal value. When I say I was asked to do that I mean that I was asked to make the appraisal and my opinion of value was $2,700 after taking into consideration the depressed real estate market. The point I am trying to make is that during the past few months there has been a marked recovery in values.

I have been in the real estate business in Denver
1127 24 years and am more or less familiar with the real

Trans.

estate situation concerning industrial property in all parts of the city and in some parts I think I have the values at my finger tips. Yes, I specialize in trackage and industrial property, particularly in the section from the 7th Street (railroad) yards district out toward the stockyard area and even south of that on Broadway. The different railroads come to me when they have shippers who intend to
1128 locate on their rails for assistance in getting them locations.

Zone 8 is a small triangular tract comprising .759 acre lying north of 46th Avenue and between the Colorado & Southern right-of-way and the Burlington right-of-way, and in arriving at its value we have taken into consideration the street frontage, nearness to the stockyards and to the business district of Elyria, also railroad facilities. The value we placed is $10,000 per acre, or $7,590. That small tract has an unusual industrial use for a filling station and that has influenced our value. There are a number of small, various types of industries that could very easily locate on that tract, both related to the stockyards business and other businesses. **Zone 8.**

Q. Well, now, summing up all your testimony, what, in your opinion, based upon your experience, your inspection of the premises, your familiarity with real estate conditions in Denver, is the total value of the real estate owned by The Denver Union Stock Yard Company?

A. For the 131.045 acres, my opinion of its value as a member of the committee or board that appraised it, is $1,645,552.50.

1130 (Witness continuing). Yes I used the phrase "the peak of activity" referring to Zone 1. Zone 1 is surrounded by the packing houses and that is

Trans.

the center of activities. I couldn't say that the same tract would be the center of activity of any industry utilizing the ground because that would depend upon the engineering feature of the industry that would happen to go in there. It might apply to another and it might not apply and in this particular one I figured all along that the highest and best use is the stockyard industry and due to the packing houses, this is the center of value in my opinion.

When I used phrases such as "expansion land" or "land for expansion" or "land necessary for expansion" I was not limiting that solely to the stockyards but to any large industrial use such as steel mills, which, as its business grew, would bring land on the outside into more intense use.

Resp. Exhibit 3 offered in evidence.

1131 Respondent's Exhibit 3, being the real estate appraisal report of Messrs. Eppich, Newcomb and Ivins, identified by the witness, was offered in evidence, Government counsel reserving the right to object until after all real estate witnesses of respondent had testified.

Cross Examination.

Yes, I would think that if the expansion lands which I have mentioned were built up with pens or covered with railroad tracks it would add to their value.

I have been in Denver about 31 years and in the real estate business about 24 years. Respondent's Exhibit 3 sets out the opinions of the three appraisers as of March 23, 1935. We considered all facts we thought material up to that time.

1132 Q. Now, during the course of your activities in real estate, you have had occasion to follow the assessments of lands as made by your tax assessors?

Trans.

Respondent objected on the ground that it was incompetent and immaterial and decisions of the Supreme Court of Colorado holding that assessed valuations of property have no bearing upon the question of actual value and cases were cited to the Examiner. Objection overruled and exceptions noted.

1135 (Witness continuing). I have had occasion to investigate the records of the assessment of land in Denver in various instances where I have been paying taxes, but I do not go to the court house to find out what someone else thinks the property is valued at when I am called upon to appraise it. Yes, in the past few years I think in some instances the assessments on real property have been de-
1136 creased and on some they have been increased. I cannot say that it is the general supposition that assessments have been decreased since 1929, but several years ago a new administration went entirely over the assessments in Denver. I do know that the assessor who is responsible for that set up for the first time a system of depreciation of improvements, so that the assessed valuation of my home would progressively decline each year on account of the depreciation taken. I don't believe there has been any such rule applying to the land values. I have had no occasion to check into that. I don't know whether the assessment on the stockyards land has been decreased or increased. I know less about the assessed value of the stockyard (land) I think probably than anybody in this room. I have steered clear of that, as I do not wish to have any preconceived views put into my head as to what
1137 others thought. If the assessors had decreased the assessment that might mean that they would think the stockyards land had decreased in value, but it would not necessarily make me think so because 735
I have found them radically wrong in both extremes.

Trans.

I have found them way high in certain parts of the city where the land has been progressively deteriorating and lessening in value, so I am frank to say that I pay very little attention to the assessor's figures unless I am vitally interested. Where I feel an injustice is being done my client, then I try to get them brought into line with what I think is a fair value. It might indicate the personal opinion of the assessor. I don't know whether the assessors use the same percentage figure on lands and buildings. I do know that under a building permit (new construction) the assessor's office,
1138 as a matter of custom, takes 80% of the building permit figure as the value of the building. In regard to the land, it is purely an arbitrary opinion in most cases. I don't think they have any similar rule in assessing lands.

Yes, I think the value of certain property, and particularly some of the property out in the stockyards has increased since 1919, but I would not
1139 make that as a sweeping rule in Denver. I am positive there has been a retrogression in values in certain districts. I would go back even before 1920. There is some land which has been going down in value all the time I have been in the real estate business, but that is due to a peculiar condition affecting the particular tract or street, because in general I think the value of land has gone up. I would say as a whole the value of land in Denver has increased from 1920 to 1930. From 1930 to 1935 I think that lands have been affected by the depression, but there are some exceptions to that where there has been a marked stability in value
1140 even during the years of the depression. Yes, when I say "affected by the depression" I mean cases where certain property owners have been caught where they had to raise funds and the market was not supporting the values, so they had to take their

Trans.

loss and their property sold off on the basis of depressed values. I will say this that during the past year there has been a marked recovery all down the line except where I said that there were certain districts where the retrogression is constant. The forces which have actuated recovery started more than a year ago, but made themselves more manifest, and decidedly manifest, this last year in some instances. As to the locality of the stockyards, but not particularly the stockyards area itself, I would say the same things apply to those directs as they do to others. Right near the stockyards the Union Pacific is the largest holder of land probably, and they have not lowered their values; they have remained firm. There has been comparatively little land sold of a character comparable to the stockyards. As to the homes in Elyria, I do not think they are any different than if they were in South Denver. As to the stockyards lands them-
1141 selves, I would say that they have a marked stability in value, but with the straightening of the Platte River channel and the elimination of the flood damage, much of the stockyard land has improved in value. No, I wouldn't say that that is the only element that had increased the value or left the value stable. The livestock industry in Denver, as I have been able to trace it, has constantly shown a healthy normal trend toward an increase and growth of the industry. That relates, of course, to receipts and sales of the general business there, and I would say that the increase in receipts has stabilized the values. If you take the reverse I think it might reflect the other way. If there was a marked increase it might take the value upward normally. In this case I would say that it has stabilized the value, tended to keep the values as
1143 they were in 1930.

I know that there has been a normal growth in

Trans.

business in the past years. I do not know the extent but I think there has been an increase from 1930 to 1935, but I am not positive. I could not
1144 relate one year to another. Fluctuations in business would not affect the situation unless they became permanent trends. Yes, I think receipts of livestock at the Denver yards will hold up so that my values will be maintained in the future. Right now the Government is promoting large irrigation projects. They are going to increase the possibilities
1145 of livestock production in Colorado, I think. I see no reason why there should be a tendency the other way. I think there is going to be a normal, healthy growth in Denver. Denver has progressed even in spite of the depressed conditions. No, my viewpoint is not based on the earnings of the stockyards; I don't know anything about the earnings. You ask me to assume that the livestock receipts increased but that the income of the stockyards consistently decreased. I would say there was something wrong with the management in such a case. Of course, if it were due to no fault of the management but to some condition such as the Government reducing rates without regard to justice, why, the
1146 Government could ruin any business, including the stockyards. What I have said is that if the normal trend of business were constantly increasing, the
1147 value of the property should increase. No, my theory is not that there would be a decrease in value if the net income should decrease constantly, because there are several related facts. There is the increase in business and the maintenance of the efficiency in management. Of course, any business is affected by its net income, but there are many
1148 things that enter into net income. Yes, if I believed that the decrease in income would be sustained, and could not be directed by better management, it would decrease the value. I think the general busi-

Opinion of value not based on earnings.

rans.

ness trend in Denver and the flood control have
149 had marked stabilizing effects. Yes, if other stockyards were cutting in on the receipts and the condition could not be corrected, it would affect the value.

As to flood control, I think the work was completed about 1931 or 1932. I am not positively informed as to the dates. As to whether or not the stockyard lands themselves are flooded, I know that
150 the old Blayney-Murphy tract contiguous to the yards used to be flooded. I don't know of the yards proper being flooded in recent years.

As to Zone 5, I did not go out to investigate after the other floods, but I am sure that it would have been affected. No, I didn't figure the added value to the stockyards land because of the flood control in percentages. I just looked at it as a broad picture. This control of the channel helped me form my impression that the land was not subject to floods and enabled me to form a basis of its value, but I didn't reduce that to percentages or
153 dollars. I couldn't help but add something mentally. No, I have never seen the condition when the stockyards lands were flooded.

. Most of the corporations I mentioned for whom I had worked in land deals chiefly referred to leases. I assembled a tract of land of about 6 or 7 blocks on option for the Union Pacific in 1926. That is approximately 14 acres at 43,560 square feet to the acre. These leases for these other corporations did not materially affect my judgment but naturally assembling land like that keeps me informed on property values but I wouldn't say that
154 I would relate this to the stockyards land. I would say that my general experience over the past years has enabled me to gauge values rather than say
that the lands handled for these various corpora- 739

Trans.

tions did or did not influence my judgment. Experience in every deal helps inform me. If I hadn't handled any of these lands I would not say I was competent to judge any industrial property, but having had a diversified experience I think it does fit me. No, I would not say there is any one particular tract which I handled for any one of these people that had more weight than the rest of the tracts in my valuation. I would say that it
1155 was my general experience. The Union Pacific tract of 14 acres which I assembled under option in 1926 is the only large tract that I have ever assembled. Most of my experience has been leasing rather than selling.

Omitting industrial property and limiting my
1156 answer to business property, I would say that the most valuable property is the corner of 16th and Stout Streets, which is the height of the retail shopping district, and that has been recognized for a great many years as the center of value. The May Company is one block down and the Kress Company two blocks, and by reason of the enlargement of the May Company and the Kress store, they pull a slightly heavier traffic count by that property
1157 than obtains at 16th and Stout, but as against the higher pedestrian count, the higher purchasing power, I think, still rests at 16th and Stout. The 14 acre tract which I assembled is six blocks down towards the Union Station and 14 blocks out towards the stockyards. By airline I would say it is maybe a mile and a half distant from 16th and Stout. The stockyards is about three miles from the postoffice, and 16th and Stout is about a quarter of a mile from the postoffice. Some of the property I assembled was improved and some was not. No, I could not tell you the values of the various prop
1158 erties that went into that assembled tract. There is a wide variance in lots. I paid $1,000 cash for

Trans.

1159 an option on one lot at $3,000 in this tract because it happened to be a vital lot. No, as such I did not add my assemblage value to the stockyards land. In other words, we looked at it as a large vacant
1160 tract, unimproved, that is, with the surface and sub-surface improvements taken off, available for development in one unit, but to add to that a premium such as I have indicated, we didn't do that. There was no obstacle to it, the land is assembled, so we did not add any premium or penalty, anyway
1161 you term it, to the value we fixed on these lands.

Yes, the report is a joint report. We did not always go out to the stockyards together. I went out there independently of them many times but we also made trips together. We met repeatedly and discussed the sales of adjoining lands and my impressions were being formed as we were discussing them. As to how I approached the situation and what I personally did, I did many things. You
1162 can take me into any part of this city and show me industrial property, and I shall have some opinion of its value to start out from. I won't say that I won't change my opinion until after I have given it mature consideration. No, I did not have an opinion about the value of the stockyards land before I assembled any data for this hearing. I merely had a general knowledge of values. We met to determine the basic elements; I had a knowledge of trackage property acquired over about 18 years. I did not have any set opinion regarding any of the stockyards lands. I went out there and weighed
1163 them. I formed my opinions after I got there and I did not form them immediately, I could not. We did not fix any values on any zones, or at least I did not, until I had practically a month of deliberation with them. When we met we took individual sales and discussed them and eventually, with the

Trans.

single exception to which I testified, we three agreed on values.

Valuation period Feb. 26 to Mar. 23.

1164 As I recall it, we started out the 26th of February and we formed our conclusions and rendered our report on values, but not the written appraisal, on, I think, March 23. The reports were written up
1165 since that time. When we three appraisers met sometimes there were slight differences of opinion. Take Zone 10, for example. Mr. Eppich fixed a value of $3,000 per acre while Mr. Newcomb and I thought it was only worth about $2,500 an acre. We stated our reasons and Mr. Eppich was outvoted; as a matter of fact there was ample ground
1166 for Mr. Eppich's value. The city bought some land on 48th Avenue between Gilpin and High Streets from the Brannan Sand & Gravel Company, as shown in our sale No. 30 on the basis of $3,165 per acre, and if the land in Zone 10 had been level and well filled, it would have gone over that value, but I figured, taking all things into consideration, $2,500 was a fair value. Mr. Spratlen of the Brannan Sand & Gravel Company with whom we talked is a firm believer in the value of the land including Zone 10. He has some land at 31st or 32nd and Brighton Boulevard which he is willing to sell at $4,000 an acre, but refused to name a price when he got up to 48th and Brighton Boulevard. He wanted to hold that land and was protecting himself for the future, so I figured very little weight to his values. I figured the present value of $2,500 was well supported by nearby lands, all things considered, and Mr. Newcomb agreed with me and that is what I call voting Mr. Eppich down. I tried to
1167 vote them up on Zone 1 but did not get away with it. I felt that Zone 5 should have a slightly higher value, but I did not have so fixed an opinion that I could not yield to them on that and I yielded after they presented their arguments. They figured

Trans.

1168 that we better err on the side of conservatism. I don't recall any instance where values were increased or voted up. As I remember it in every case where there was a dispute, the lower value was taken. In a retail appraisal I would not say that I would consider all of the elements that I
1169 considered in the stockyards property. Different types of property would have different factors weighing either lightly or heavily; for example, railroads do not weigh at all in retail property. Yes, we consider the railroads in valuing the stockyards but would not have considered them in some
1170 of our downtown property. Topography is another element that we would not consider in valuing downtown property. It goes without saying that it it flat; all of our business districts are practically flat, so I wouldn't stop on that. The downtown district has transportation as shown by the traffic counts and the number of people downtown purchasing. Paved roads, labor and housing do not influence me downtown, because it is a general condition that obtains and is taken for granted, while in an industrial property it is a marked advantage. In other words, if a man comes to Denver to establish a factory, that would be one of the first things he would want to know: "Am I near a labor supply? Are they going to have difficulty in arriving at my plant when I build it?" In a downtown retail property I don't stop to consider labor and housing. Those elements are disregarded, we consider they exist. The zoning question, it goes without saying downtown that it is zoned for retail business, but in industrial property you must consider it. It is vital. The scales are weighed with each
1171 particular property. There are elements which I would use in valuing downtown property which I would not use in valuing the stockyards. For example, I did not use income in the stockyards. I

Income not considered in valuing stockyards.

Trans.

would use income downtown. I would consider the rental value of the property and that would be probably the determining factor with me in downtown property. I would also consider whether the property had stability or whether it was slipping or advancing. You can go down in what we term our loop district, 20 years ago and a little prior thereto, when I was starting in the real estate business, that was one of the very highest rent districts in the city of Denver. You could not call it high class shopping because it was made up of groceries and meat markets. There has been a revolution in the retailing business in those particular industries. Instead of being centralized downtown, they are scattered all over the city. They have created values in the suburbs and in creating values in the suburbs, they have just about milked the values downtown in that district, and I would certainly consider that in advising one of my clients. When you go to 16th and Stout Street I would say there is an element of stability there that is marked so far as I can see at present. In the lifetime of any of us present I don't think the value will lower. I
1172 won't say that it will increase. I think it will.

Method of testing comparative sales.

Yes, I state on page 2 that we checked as far as necessary with the grantors and grantees the considerations involved. We gathered a number of sales that we thought in the beginning might have application and discarded some of them. We had a list of
1173 sales covering Elyria and that district from the abstract company, and when we went out there it was perfectly obvious that many of those sales had no bearing on the value. There are other factors, take the Union Pacific lands, the Union Pacific sells their lands with restrictions. Some of their sales have not had those restrictions. For example, one of my clients wanted to lease (sub-lease) a piece of land at 46th and Brighton Boulevard, with trackage on

Trans.

it for $200 a month rent. There was a bulk oil station on it and we had difficulty in getting that rental because a clause in the Union Pacific lease prevented the lessee from selling gas at retail. We didn't get anywhere, but in viewing the values of the Union Pacific I take those things into consideration.

No, the statement that we consider the accessibility of the yards to the business district of Denver is not a duplication of the transportation and paved roads element. In transportation we had in mind the bringing in of livestock by truck from all over the State. The accessibility to the business district
1175 of Denver is an element of value because in doing business at the stockyards men are necessarily coming into Denver all the time. It hasn't an influence that I can translate in dollars and cents, but it does add to the value of the stockyards, I think. I can give you a very definite example of how that is an element of value. Up to about three or four years ago both Swift and Armour maintained downtown wholesale distribution outlets. With the development of roads and motor trucks they found it just as convenient, more so, to deliver to the retail firms in Denver from their plant at the stockyards instead
1176 of maintaining those plants downtown. I figure the accessibility to Denver is something to be considered. I cannot fix a definite value showing the extent to which it has influenced me. It is a beneficial factor but I cannot translate it into percentage or dollars and cents.

Yes, under topography I state that the gravelly soil is an advantage that contrasts with the adobe soil of other districts. We have here in Denver different types of soil. We may have adobe soil that when it rains it retains the moisture, it doesn't absorb it or shed it. For example, at the Hanks feed lots, that has adobe soil or floods have added a top soil of clay that holds the water. It is muddy after 745

Trans.

this rain. A gravelly soil readily absorbs moisture. There would be a distinct disadvantage in adobe soil
1177 at the stockyards, particularly in Zone 3 where it is not paved. It adds to the susceptibility of the land to drainage and sanitation to have it gravelly. Yes, I know that the sewerage at the stockyards is entirely underground and that the roads are paved.

1178 MR. BOSWORTH: Now, Mr. Examiner, I think we have all been on the same basis here, and that is that Mr. Zelinski testified, as these witnesses have testified, that as land men they appraised this without any surface improvements and the surface improvements would include paving, so specifically upon that situation, when it is perfectly manifest from the testimony of all the witnesses that this land was appraised as naked land without any of the surface or subsurface improvements in place, the question then comes up as to what could be done by way of paving. That is something apart from this witness—as to which no direct testimony was given on direct.

MR. MILES: But, Captain, he has told us that this gravelly soil is an advantage.

MR. BOSWORTH: To the tract, not to the stockyards.

MR. MILES: To the tract. I am trying to find out just in what way.

1179 (Witness continuing). I do not think the difference in cost would be material in putting in a sewer in adobe soil and gravelly soil, but it doesn't follow that this gravelly soil wouldn't be an advantage for other industrial purposes. I don't know how deep a trench would have to be in adobe soil not to need shoring, nor how deep the trench would have to be in gravelly soil to need it. I don't know

Trans.

how deep the gravel extends; I haven't gone into
1180 that, but you will note out there in the zones where the gravel pits are, there are zones that play out. I do not know whether the stockyards company has insisted upon additional value in the structural property on account of the gravelly soil. They have not insisted or suggested any valuation to me whatsoever, and no one connected with the Stock Yard
1181 Company has done so. I totally disregarded the structural property.

1182 Government counsel stated that he was in error and that the Stock Yard Company had not insisted upon any value of the structural property due to shoring.

1183 (Witness continuing). The only place that I know where the gravel is "in place" is in 6.18 acres at the north end of the yard, and of course that would not have a marked influence on my values.

Believes land would sell at valuation figure.

1184. Q. In your opinion, Mr. Ivins, could you sell the stockyards land at the value that you have placed on it?

A. I think so.

Q. To what industry?

A. To a stockyards industry.

Q. Do you know of any other industry that you could sell the stockyards lands to at the value that you have placed on them?

A. I do not know as to that but I think I could, I might not immediately.

Q. What other industry?

A. Possibly for a steel plant.

Q. In your opinion how long would you have 747
to carry those lands if they were listed with you

Trans.

on a certain date, how long would you have to carry them before you could sell them to a steel industry?

A. That is an impossible question to answer. I could say this, that I have carried lands of my own for several years during the best times and then disposed of them very satisfactorily both by sale, by building and lease in the time of depression.

(Witness continuing). A smelter might be an-
other industry that could use a tract as large as the
stockyards. The establishment of such a smelter
1185 at Denver has been much discussed of late. It hadn't
been discussed much prior to the revival of mining.
Yes, periodically or almost as long as I have been
in business, there has been discussion of the estab-
lishment of a steel plant in Denver. I would not say
that there would be no chance of selling the tract
1186 to such an industry. I think there is other business
that may not be apparent to me today that might
use the tract. I might have to hold the tract for a
year or two, I do not know. Denver is near a supply
of coal, iron and limestone used by a steel mill, as
a matter of fact, is nearer to the source of iron than
the Colorado Fuel & Iron Works at Pueblo. No, I
1187 do not know of any industry that has made a bona
fide attempt in the past 5 or 10 years to secure 131
acres of land in or near Denver. No, I do not know
the value of lands which smelters generally try to
obtain. In valuing the lands of the stockyards com-
pany I consider the general industrial use and I
would place approximately the same value on the
land for that use, because I realize that the stock-
1188 yards is the present highest and best use. I valued
those lands for industrial purposes recognizing the
highest and best use as being for stockyards pur-
poses. Yes, in our report we mentioned the Dotsero
Cut-off, and state that it brings a part of western

General industrial use considered.

Trans.

Colorado within reach of Denver, lessening the time of transfer to 15 hours on cattle trains. The element of time would particularly apply to stockyards, but the element of bringing coal from the western Colorado fields would be influenced by the Moffat
1189 Tunnel and the Dotsero Cut-off. The haulage of coal is the only commodity which I have in mind apart from the stockyards that would benefit from the Dotsero Cut-off. Yes, I state that much livestock that heretofore went through by the Pueblo Cut-off is now diverted to Denver, by reason of this saving in time. That livestock previously went to St. Joe, Omaha and Kansas City probably. George Williams of the Rio Grande told me that the Dotsero Cut-off gave Denver a decided advantage over those three cities. No, I do not know the amount of livestock that comes to Denver by reason of the Dotsero Cut-off that otherwise would not come here. The Cut-off was just one of many contributing factors I considered. I gave no specific value to that statement
1190 of Mr. Williams. I would not want to differentiate as to whether it was of minor or major importance in fixing my value.

1191 Yes, I have also mentioned the paved and im- **Highway**
proved highway system of Colorado. It is another **system.**
contributing factor of value. I think it has brought livestock to Denver from eastern Colorado. I can't say how many head. I gave the fact of paved highways some weight. I don't know whether the improvement of highways in other States has counterbalanced the improvement of highways in Colorado. I am not familiar with it. Yes, these several factors contribute to the value.

1192 The increased number of water taps between 1930 and 1935 tends to show that Denver has increased in population and because of that increase the land values here are stabilized or even increasing. No, I am not aware of a plan of the Water

Department that where a person has a private supply you must seal it off before he taps on to the
1193 city main. I have lived here 30 years and I know that the number of people with a private supply of water are comparatively few. I have read in the papers that during this drouth certain parties down in the country club district have drilled their own wells to irrigate but they are in jeopardy of losing those wells because of the water right laws here.

1194 Yes, I remember my statement about the beef which was caught in the flood not dressing white but dressing yellow. I only know what the Superintendent of the Hanks feed lot told me, that it was due to the exposure of the cattle to the flood and in some cases I am only using his statements and know nothing about it myself.

By the use of the word "proximity" in my last paragraph I refer to the various elements that go
1195 to make the highest and best use. You asked me yesterday regarding the accessibility to the business district of Denver, and I cited you Armour and Swift, selling their wholesale distributing branches in the business district. By the word "proximity" I mean very largely proximity to Denver. I can think of no other element considered that is not enumerated.

No, I can't tell you the number of industrial lands that I have appraised, I don't recall that right now because it has been over a number of years. No, I couldn't tell you the number I have appraised in the past five years, but I am continually called upon
1196 by clients either for a formal appraising or for opinions on the value of industrial property where the prospective purchase or sale of land is in view. I have sold industrial land in the past five years
750 but I don't recall selling land in terms of acres cov-

Trans.

ering that time. Nor have I bought any for clients in terms of acres..

Yes, I referred to the National Fuse Company sale at $2,500 an acre, which I used as one of the
1197 other sales of land near to Zone 7. I gave comparatively little weight to it because it has practically no access to a public highway, except that it is tied up with land of the National Fuse & Powder Company adjacent and so long as they remain in the same hands, that would give ingress and egress to this particular tract and would have some relation to its desirability for the National Fuse & Powder Company but not for the general use of the land. As to Zone 4, its access is to Franklin Street at the north. Yes, the Burlington right-of-way intervenes but I don't think that bars access to Franklin Street. It would also have access to Zone 1 through the sheep division and you could also reach the public highway along the easement on the bank of
1198 the river. I don't know whether that is open to the public.

1200 Yes, we considered sales of land east of the Burlington right-of-way and in the general vicinity of Lafayette and 47th Street as to Zone 1 values. The Murphy barns, for example, are about 400 feet away from Zone 1. Yes, I considered that sale indicative of values in Zone 1 although that tract has not the facilities that land in Zone 1 has.

Yes, I said that Washington Street had been curbed and oil-surfaced. I didn't attach any particular value in terms of dollars and cents to that in fixing the value on the stockyards land. It gives access over good roads to land in Zone 5. That is the principal way I considered it. It is only in the way that a highway is supposed to reflect value. 751

Trans.

Trackage an element of value in industrial property.

Yes, I have stated that trackage is a valuable
1208 element in valuing industrial property. No, I cannot describe in percentage of the total value specifically what I would allow on account of the trackage facilities. I have not estimated as to any one zone on the map that that zone has so many dollars extra value because of the trackage facilities. I can't approximate it except to say that industrial land without trackage is almost inconceivable. Oh, yes, there may be some industries where a single line of track would suffice for that industry and other industries, such as stockyards, where a number of tracks and a number of rails would be necessary to serve them properly.

1209 With regards to the Capitol Packing Company, the building is practically on the same grade as stockyard zone 5. I do not know whether the K. & B. plant has a switch from the Colorado & Southern but I think it does. This map that I have shows a switch to the Mountain States Packing & Provision Company and I think that should be the K. & B. plant. If it does not have trackage, it would make some difference in my value. We valued Zone 5 at $3,500 an acre and the lack of trackage would probably bring down the K. & B. land to at least that and possibly more because of the fact that the K. & B. plant is lower and not as favorable to grade as Zone 5. The lower end near the South Platte would be several feet below the Washington Street level, but where the buildings are is practically the Washington Street level.

1210 I understand that the railroad tracks on Zone 4 are owned by the Stock Yard Company and leased to the railroad. Yes, in evaluating the property I theoretically stripped that zone of those railroad tracks. If not used for railroad tracks there are parts of that zone that could be used for other purposes advantageously, possibly for a small packing

Trans.

plant which would be only if the stockyards were used as a stockyards.

Yes, I said that retail utilities could be placed on Zone 1. You would have the same accessibility
1211 there as now to the Exchange Building. I would place them in the immediate vicinity of the Exchange Building. Yes, the land is now used for pens. Yes, if you assume that the land is used as a stockyards the retail utilities on Zone 1 would probably lessen the value of the remaining portion of that zone for stockyard use. I could not say how much.

1212 By the lease or sale No. 5 in our appraisal the railroads obtained 4.26 acres. I don't know whether the railroads also obtained access to the unloading docks and unloading chutes and chute pens and chute alley. I have not read the lease. All I considered was the price at which the railroads leased the land. No, I did not consider any improvements.
1213 I couldn't answer the question what I would have done had I considered the improvements because I have been instructed not to consider the improvements. I do not know what was contained in the lease. **Blayney-Murphy tract.**

Yes, in connection with the Blayney-Murphy transaction we state in our report the purchase of land at $40,000 plus and total cost to Blayney-Murphy Company to make land suitable for packing house purposes, $89,000 plus. Blayney-Murphy Company has, as I see it, attempted as nearly as possible to reproduce the facilities available to other packing houses next to Zone 1, which would be Armour and Swift. The tract in its raw state was without rail facilities, without direct access to the yards, so by means of the construction of a viaduct they tried to get the same facilities as Armour and Swift, or as nearly as possible thereto. Naturally,

Trans.

the distance from Zone 1 in my opinion does not make that tract of equal value to land abutting on
1214 Zone 1. Yes, we considered the value of adjoining lands in evaluating the stockyard property, and I considered the Blayney-Murphy land, as stated, namely at $89,717.75, being the cost to Blayney-Murphy to make the land suitable for packing house purposes. At the raw land cost of $40,781, the tract would not have had access to the stockyard, and would have left it like other lands near there. The Blayney-Murphy tract, I do not consider, does not reflect the value in Zone 1, but Zone 1 reflects a value out there. I used it as corroborative of the opinion I formed of land in Zone 1. If I had considered it (the land without the viaduct) at $40,-781.00, it would not have affected my valuation of Zone 1.

1215 The 3.6 acres in Zone 1 we valued at $15,000 per acre, and the 34.934 acres in Zone 1, we valued at $17,500 per acre. The 3.6 acres is just south of the Exchange Building. My understanding is that the line is on the south side of the alley immediately south of the Exchange Building and runs through from the Burlington right-of-way to the joint right-
1216 of-way. The difference in the accessibility is that the north portion of Zone 1 is accessible by the subway under the tracks; also by the road coming in over the Burlington right-of-way. The 3.6 acres is also reached by the subway under the Burlington tracks and by the road, and I would say that the accessibility is the same. The topography is prac-
1217 tically the same, and transportation, paved roads and sewerage are equally available to both tracts. The 34.934 acres is in the center of the yards and is closer to both the Armour and Swift plants and to the viaduct leading over to Blayney-Murphy. I wouldn't say that all of the elements of value affect both tracts equally. The 3.6 acres at the south we

Trans.

figured were more nearly like the land in Zone 2. The reason for our difference in price is that the land designated at 34.934 acres is more intensively
1218 used.

Intensive use of large part of Zone 1 an element of value.

I can't say that I have made a study of Government Exhibit 21, which is called the sales map. I have examined it in the short time it has been laid
1220 before me. I am familiar with the location of the land in Zone No. 1 in the Government appraisal, but I am not familiar with the sale. I don't know anything about that land. As to sale 2, I am not familiar with that land and can only state its accessibility as I see it on the map. As to sale 3 from Mountain States Packing Company to George H.
1221 Cooper, 9.758 acres, Mr. George Cooper is a personal friend of mine and was an officer of the Mountain States Packing Company at the time this so-called sale was made. He told me that the Mountain States Packing Company was in financial trouble, they needed a loan and he purchased this land from them with the understanding that they could buy it back at such time as they were financially able to do so. They were unable to purchase it back and Mr. Cooper continued to hold it. He told me that he did not consider it a legitimate sale. As to whether it reflects the value of the land, part of the land, I believe, is being used for a dump at the present time. Part of it was sold to a couple of men for a filling station. In my opinion the value of the land might be in excess of $10,000 shown as the consideration. I don't figure that Mr. Cooper would buy the land on virtually a loan basis and pay the full value and let the grantor buy it back any time they wanted to at the same figure if he felt he was paying full value.
1222 I have not considered, however, the difference in my judgment between the two. Generally speaking most of these sales are so totally unrelated to the

Trans.

lands of the Stock Yard Company that I haven't even considered them. I consider them having no similarity. Sale 3 is comparatively near to Zone 10, but I don't consider any of those as having a bearing on the stockyards land. No, I don't consider sale 3 nearer to Zone 3 of the stockyards because the Burlington right-of-way intervenes and separates it. It is totally unrelated, disconnected, and has no bearing whatever on the stockyards land.

1223 As to Government sale 4, which is our sale 27 "above land is located at the corner of Brighton Boulevard and Race Street." I am reading from our sales sheet. "The consideration was verified by grantor. Mr. Gildea was forced to sell and the property was bought by the estate of John Norman, deceased, which owned adjoining land. Mr. Robert Norman, the present owner, told Messrs. Eppich and Ivins on March 18, 1935, that the estate paid Mr. Gildea $1,000 for the land, which he considered a bargain. This property and another parcel were deeded to John Robert Norman by the administrato of his father's estate." The land is comparatively close to Zone 10. I didn't attach much significance to it, practically none.

Sale 5 in the Government appraisal I know nothing about, but from its location on the map I would say it was totally dissimilar. The same remarks would apply to sale 6. When I say "dissimilar" I am not speaking of topography but
1224 value. The topography may be the same. It has street accessibility. Both sales 5 and 6 face on York Street. Sale 7 is totally dissimilar as to value. It is absolutely remote from the stockyards. According to the map there is no rail connection with any of these lands. As to whether or not rail connection is possible, I presume it could be arranged. The same remarks apply to sales 8, 9 and 10, except that sale 9 has trackage facilities. Sales 11, 12 and

Trans.

13 are dissimilar to stockyards land. Sale 14 would apparently be close to Zone 10. I haven't examined it and really cannot speak from any opinion I might
1226 form at this time.

Re-Direct Examination

Yes, I would regard the gravelly nature of the soil as an advantage to an industry which perhaps did not require 100% paving of the entire area, as, for example, an oil refinery or a railroad; that is, a large railroad yard.

Blayney-Murphy tract.

In my opinion the Blayney-Murphy tract would not have been comparable to stockyards land without this expenditure of roughly $49,000 for the items listed in our report. The Blayney-Murphy transaction you will find under Zone 1 immediately following sale 15 in our report.

Appraised as naked land.

1227 In appraising the land I regarded it as stripped of tracks and the railroad accessibility of which I spoke was the railroad coming up to the different ends of the yard available for connection with tracks that the Stock Yard Company might build there.

Zone 4.

1228 Zone 4, as shown by my map and by respondent's Exhibit No. 1, I believe abuts the Northwestern Terminal tracks at the north end. The Burlington Railroad, I think, has a small strip immediately south of Franklin Street. At the south end of Zone 4 it abuts on the C. & S. right-of-way, and also abuts on the Union Pacific right-of-way into the yards.

1229 What I said about Swift and Armour being able to close their wholesale distribution plant and serving their trade from their packing plant, is also true of Blayney-Murphy or its predecessor, the Coffin Packing Company. They formerly maintained and operated a wholesale meat house in the 1500 block on Market Street. They found it unnecessary to maintain it and Mr. Blayney sold his

Trans.

building for $35,000. Summing up these three in-
1230 stances I would say they reflect a value from a wholesale standpoint in addition to the value for the stockyards.

Accessibility to city an element of value.

Yes, proximity to the center of the city is generally considered an element of value. The fact that people having business with the yards may come in by train and reach it with reasonable speed and a reasonable expenditure of time, is an element of value, which is not limited solely to stockyards but to any industry.

Yes, the Cooper-Mountain States transaction
1231 started out as a loan and amounted to a forced sale by reason of the fact that the grantor was unable to pay back the loan and repurchase the property, although it was not made in the form of a mortgage. I do not consider, as an appraiser, that such a sale is representative and should not be considered in
1232 determining fair values.

Potential value considered.

What I meant when I answered Judge Miles and stated that if pens were constructed on Zone 3 it would increase the value of Zone 3, is that any appraiser in appraising land for industrial uses necessarily figures into his valuation the potential value of the site. Perhaps I should not limit this solely to industrial appraisals. Here in Denver we use statistics covering the number of people passing certain corners, and these figures are compiled by the University of Denver School of Commerce. I think these facts are recognized by all appraisers. The same thing is true in a certain measure in industrial property. If a particular site has clearly a highest and best use, I do not believe any appraiser can overlook the utilization of the tract, and therefore its potential value or potential earnings to a concern engaged in the highest and best use. If pens were on the tract north of Race Court in Zone

Trans.

3, it would mean that the highest and best use, which all of us, including the Government appraiser, have recognized, namely the stockyards use, had come up to some of the potentialities as we saw them, viewing the land as naked land on March 23, 1935, and since those potentialities would have actually been realized by the construction of pens, this area would have tied in closely and become a part of the main area as an enlargement of that
1233 area. Hence, the value of Zone 3 would then more nearly approach the value of the main tract than it did on March 23, 1935. He stated with regard to Zone 9 that the potentialities of that zone for small retail store business was what led him to give the greatly increased value which I spoke of yesterday, or about $6,000 an acre over the value he assigned to Zone 1. Except for the three stores he mentioned, those stores do not exist today on Zone 9, any more than those pens exist on Zone 3, but I take it that Mr. Zelinski and I are looking at it in the same manner necessary from the standpoint of potential intensive return from the highest and best use.

Q. Now, the mere fact that the highest and best use of a tract is perhaps destroyed, but with other uses, possible uses and utility left intact, would that necessarily change your idea of the value of the tract?

Land appraised for industrial purposes.

A. No, we appraised this tract for industrial purposes, not confining ourselves to stockyards use.

1234 HARRY W. NEWCOMB, a witness called by respondent, testified as follows:

1235 I have been in Denver 55 years and in the real estate business 33 years. I am President of Newcomb Realty Company, which conducts a general real estate business. We buy and sell real estate, collect rents, have a property management depart-

Qualifications.

33 years experience.

Trans.

ment, a real estate loan department, an insurance department and make appraisals, and we have built homes, store buildings, garages and an office building, which is the second largest office building in
1236 the city. I make all the appraisals personally.

Appraisal experience.

As to my appraisal experience, I have made appraisals for the Denver Union Water Company, the Chicago, Burlington & Quincy Railroad, the Mountain States Telephone Company, the American Smelting & Refining Company, the First National Bank of Denver, The Rio Grande Fuel & Feed Company, the Denver Terra Cotta Company, Crown Hill Cemetery Association and El Jebel Shrine Association. I have appraised the Masonic Temple in Denver for a loan. I have been appraiser at various times for the County Court in estate matters and have appraised for the state inheritance department for the State of Colorado. I have also made appraisals for the city in condemnations where streets have been opened and where subways have been built. In July, 1932, I appraised $585,000.00 worth of mortgages and real estate of the Good estate for inheritance tax purposes.

Experience in assembling properties.

I served on a committee which reviewed the values of the downtown business district for the Assessor of the City and County of Denver.

I have assembled properties. The first property that I ever had any experience in assembling was
1237 when I worked for Wilkins & Cornish and afterwards became a partner in that firm. We assembled the property upon which this building, the Post Office building, is situated, together with A. G. Bowes, and sold this property to the Government for the present Post Office site.

I have assembled properties for industrial purposes for the Queen City Foundry, the Gates Rubber Company, the Schwayder Trunk Co., the Piggly

Trans.

Wiggly Stores Company, the Spray Coffee Company, the Bundy Coal Company, the American Radiator Company, Blayney-Murphy Packing Company, General Motors Company, St. Luke's Hospital and the Tivoli Brewing Company.

I have had experience with sales of business property. Our firm sold the Metropole Hotel and the ground adjoining this hotel situated at 18th Avenue and Broadway upon which the Cosmopolitan Hotel has been erected. We sold this hotel and lots adjoining for $660,000.00. I speak of "we" here. That is the Newcomb Realty Company that would make these deals under my supervision. We sold the corner of 16th and Stout Streets, known as the Barth property, for $525,000.00.

We made a 99-year lease on the corner of 16th and Welton Streets consisting of four lots on Welton Street, being 125 feet on 16th Street, and 100 feet on Welton Street. This lease was made for 99 years, starting at $30,000.00 a year and increasing to $40,000.00 a year.

We sold six lots on Tremont Street, 50 feet east
1238 of 16th Street and leased the two lots on the corner of 16th and Tremont to the Tremont Investment Company for 99 years. I was a member of a syndicate which erected a 12-story building on this property, known as the Republic Building, and secured a loan from S. W. Strauss & Company of Chicago for $1,750,000.00. This building is a 12-story structure with basement and sub-basement. Our Company has complete management of this building.

I belong to the Denver Real Estate Exchange and am a member of the Colorado State Association and of the National Association of Real Estate Boards. I was President of the Denver Real Estate Exchange in 1919 and three years later was elected President of the Colorado State Association. In 761

Trans.

1920 I was elected Vice-President of The National Association of Real Estate Boards and was again elected Vice-President of The National Association of Real Estate Boards in 1928. I have served on the Appraisal Committee on downtown property for The Denver Real Estate Exchange for periods of one to three years at a time from 1919 to 1930.

I belong to the National Association of Building Owners and Managers.

I have recently made an appraisal of the land of The Denver Union Stock Yard Company with L. F. Eppich and Barclay Ivins. Yes, respondent's Exhibit 3 is the report to which I refer. Yes, that is my signature attached.

Familiar with tract for 20 years.

Made appraisals in 1925 and 1930 of stockyard land.

1239 Yes, I am the same Mr. Newcomb who testified at the hearing had by the Secretary of Agriculture in 1930 and I appraised the property of The Denver Union Stock Yard Company at that time. I appraised the land at an earlier period, namely 1925. I have been familiar with the area and the district and with this particular tract, which is called the stockyards tract for over 20 years. 1925 was the first time I was called upon to make a definite appraisal.

Present value.

1240 Yes, the sum stated in respondent's Exhibit 3, namely $1,645,552.50 is my opinion of the total value of the stockyards land as of March 23, 1935.

Appraised as naked land.

The basis on which we appraised those lands was without improvements, taking Armour and Swift and the Packing houses all in their present places but other improvements taken off, that is, with the pens, buildings and all surface structures of the yard company removed. We did not consider the sub-surface structures.

Blayney-Murphy tract.

1241 Yes, I was the one who assembled the Blayney-Murphy tract and it took me about eighteen months.

Trans.

As to the consideration which entered into the total,
1242 cost of land of $40,781.11, one tract of 3.71 acres the company paid $19,000 for and in addition paid the expense of moving a house which was situated thereon to other property and gave the woman 6 months' free rent and also paid me a commission of 5% on the $19,000. The company then paid $11,000 for approximately a 3 acre tract from Brannan Sand & Gravel Company, inside of which was a gravel pit and had to be filled. Before Brannan would sell Blayney-Murphy had to pay the cost of a bridge across Race Court, the cost of opening up Brighton Boulevard and leveling the road and getting 49th Avenue closed by City Council. The cost of the fill is also included in those figures.
1244 The other figures I obtained from Mr. Murphy, including the cost of constructing the viaduct or cattle runway over the railroad tracks to connect the packing plant with the stockyards, namely $40,-000, making a total of $89,717.75. In my opinion,
1245 those additional expenditures must be considered in determining the per acre cost of this triangular tract because they were necessary to make the tract properly accessible to the stockyards. To do so you would either have to lower the ground or build a viaduct to have accessibility to the stockyards, and I regard these various items as the equivalent to a leveling or grading of the ground.

My valuation of Zone 5 is based upon the following: There was a sale made from the Reudy Products Company to the City and County of Denver. Yes, these are the same sales to which Zone 5.
1246 Mr. Ivins testified. Yes, they had some influence on our value. Also the street improvements that the Stock Yard Company have paid amounting to something like $1,700, and the condition of the channel being completed, the uses that the property could be put to, made me think that a reasonable

Trans.

value was $3,500 per acre, and I feel that that value is adequately supported by these contiguous sales.

Freedom from floods an element of value.

Yes, the stockyards land is free of flood menace and I figure that the freedom from flood menace is an element of value. Yes, the elements of value
1247 which we list are those which we considered, but my opinion is based upon my best knowledge and experience. I placed a value of $2,500 an acre on Zone 10, which was called the old gravel pit, in the last hearing. Yes, that was a lower value than we placed in the last hearing. It is not level but irregular and pretty well pitted. I think the last time we considered more value to the gravel than we did to the land.

We adopted these zones because they were given to us by the Stock Yard Company, and it was stated to us that it was the zoning recommended by the Government.

Zone 9.

As to Zone 9, which is the Stadium property and the horse and mule division, I placed a value of $20,000 an acre, which, in my opinion, is supported
1248 by contiguous sales. Some of those sales are the Hollis Platt Horse Company sale of Lots 29 to 46 to The Denver Union Stock Yard Company on August 13, 1919, for $75,000, $50,000 improvements, and naked land value $25,000, or a sale at the rate of $19,340 per acre. The Gordon Hollis sale of Lots 47 and 48 to the Drovers National Bank on January 8, 1920, for $47,500, estimated improvements $30,000, naked land value $17,500, Mr. Jacob Burkhardt stated on September 25, 1929, that at the first receiver's auction to dispose of the assets of the Drovers National Bank, he made a bid of $23,000 for the two lots and improvements, which bid was turned down. Later a subsequent receiver sold it to him for $18,000 and a short time thereafter Mr. Burkhardt received an offer from Henry

Supporting sales.

Trans.

VanSchaack of $28,000 for the property, which he declined as he considered the property to have a value of at least $40,000. On March 14, 1935, Mr. Burkhardt told Messrs. Newcomb and Ivins that
1250 he now values the land alone at $25,000. I also considered the Murphy barn sale, and I may state that I considered the improvements there not to exceed $6,000. I have known the property for 10 years and it hasn't changed any in the last ten years. I couldn't say beyond that time. My basis for the statement and figures of $6,000 for improvements and $13,000 for the land was obtained from Mr. Joseph Murphy, and he is the grantee in the deed. Yes, I consider the value fixed on that acreage in Zone 9 as a fair and reasonable value of that tract as of the date of our report.

1251 In Zone 1 we valued 3.6 acres at $15,000, and 34.934 acres at $17,500. In Zone 2 we valued the land, namely 23.19 acres, at $15,000 per acre. It was after investigation of the property that we divided the zone into two zones. We took the 3.6 acres in Zone 1, which is the so-called triangle property south of the Exchange Building, at $15,000 an acre. We thought that was comparable to Zone 2, and we took the other part of Zone 1 as the highest land. I figured land values of trackage property in various parts of the city. I had occasion to appraise land for the Burlington Railroad on Market Street between 38th and 18th Street, and while it is different property, I can't get out of my mind the knowledge of other trackage property in the city, though that is not in exactly the
1253 same location. Yes, the land I appraised on Market Street is comparable industrial property except that it is very difficult in any other section (Denver stockyards) to secure a large tract of land. You take on Market Street from 38th to 18th and there isn't a piece of a dozen lots there owned by one

Zones 1 & 2.

Trans.

owner. I have had experience in trying to buy
property for different industries in these various
sections, and would shift from one locality to an-
other because we couldn't get a tract of land suf-
ficiently large for what they wanted. Brighton
Boulevard property has direct accessibility to the
1255 center of town. Yes, the Brighton Boulevard prop-
erty is known as the stockyards district, or the
stockyards area in the town of Elyria. Due to
Brighton Boulevard, which is practically a belt
line, people can get to the stockyards quicker and
I consider this property is very valuable on account
of that accessibility, not only to the city but to
the roads all over the State which have been im-
proved. Yes, the list of improvements in highways
affecting transportation into Denver completed in
the last five years, which list was obtained from
the Colorado State Highway Engineer, was read
into the record by Mr. Ivins, and has a great bear-
ing on values. Yes, the extension of Broadway
and the Broadway viaduct renders it quicker to
reach the stockyards than it is to go to 38th Street
and Blake.

Highway accessibility an element of value.

1256 Yes, I figure Zone 1 as the center of activity of
this tract, and that is true in my opinion of any
use of that tract. From Lafayette Street, which
is the main entrance, it would be my impression
that this main street would form a center of opera-
tions for any industry, stockyards or any other and
they would begin, then, to build from that section
there where the subway and the street adjoining
the subway enter the stockyards ground. For that
1257 reason I have scaled down values at each end, so
that the triangle at the south is $15,000 per acre
and Zone 2 at the north is $15,000 per acre. Yes,
I think the triangle is more nearly comparable in
value to Zone 2.

Trans.

1258 Our procedure as a board was that the first thing we did was to order a list of sales of all property in this locality from the Record Abstract Company, then we inspected the property. I have been inspecting the property since 1925 and was on the appraisal in 1925 and 1930. We walked over every foot of the ground and we would find things that we were in doubt about, then we would go back and go over them again. Sometimes Mr. Eppich and myself; sometimes Mr. Ivins and myself and sometimes the three of us would go together. We would raise the various points that we might be in doubt about.

Method of procedure of Respondent's appraisers.

1259 I have had 33 years' experience in Denver in the real estate business and am familiar with the conditions generally speaking of real estate in Denver. Yes, I verified nearly every sale and in 1930 Mr. Bartels and I verified sales, talked to Mr. Burkhardt and Mr. Brannan, to the Capitol Packing Company offices, to Mr. Averich, to Mr. Murphy and to the agents for the property that was sold for a filling station out there a short time ago. My opinion is based not only upon my personal experience, not only on the sales verified, but talking with people as to their own opinions of value, checking up with the sales.

1261 Yes, I heard Mr. Ivins' testimony with regard to the Local Beef & Mutton tract. I don't think that tract is comparable in any manner with any part of the stockyards land because it is away from the stockyards area, it is low, subject to floods, is not on an oiled highway or comparable road with the stockyards, and I would term it that it was on a sidetrack. Yes, it was flooded in the recent flood. I was out there and couldn't get across but saw where the flood had got it when the bridge was out.

Local Beef & Mutton tract.

1262 None of the stockyards land was affected by the flood. We went out the day after the flood to check

Trans.

it. Yes, the stockyards lands slope towards the Platte and have good drainage.

Zone 3.

Zone 3 has accessibility by Race Court. The C. B. & Q. abuts it on one side and the Moffat on the
1263 other, namely on the northwest side. If the road were changed from Race Court to the north side of the track I don't think it would alter my values, although I wouldn't want to answer that question until I saw how the road was put in there. If it was as accessible as Race Court, it would not affect my opinion.

Zoning Ordinance.

Yes, I am familiar with the zoning law. I think there is no other tract that could be assembled in the City and County of Denver for industrial B uses covering 75 to 130 acres with the zoning classification as specified. The stockyards tract is the only tract in Denver that could come under
1264 that ordinance, which has such trackage facilities to the Burlington, Union Pacific, Moffat Road, Colorado & Southern, Santa Fe and the other carriers entering Denver.

1265 *Cross Examination.*

Yes, I appeared as an appraiser in the 1930 hearing. No, I did not go into the 1930 report in making out this report. I made an independent report at this particular time, and did not take into account the methods of 1930. I took my knowledge and experience and best judgment in making my
1266 appraisal. I would not say that I used the same factors; in a period of 5 years there might be different elements that would enter into the appraisal so that I might use one factor at one time and another at another time. I had not checked to see whether I used the same factors in 1935 that I used
1267 in 1930. In both cases I took my general knowledge. In both appraisals I took the location of the land, made a careful inspection, going over every piece of ground, considered the railroad facilities, uses

Trans.

to which it was put, the labor, facilities, housing conditions, roads entering the stockyards from the city and throughout the State, the fact that lands are cheaper in this than other locations, that there are churches, schools, community houses, suitable for the enjoyment of the employees of industries in this location, and particularly the zoning ordinances pertaining to this location. I think these are about the factors I *took into consideration in both ap*praisals. Yes, I have read Mr. Zelinski's report and I think his ideas and mine coincide very closely with the method that he pursued in appraising this land. I heard Mr. Zelinski testify here, and I read

1268 his report since the trial began. Yes, since 1930 the stockyards disposed of a small parcel up in Zone 10 and sold a strip of ground to Armour & Company since our report was made, but there was an option out on that piece previous to the report which we knew about. That acreage was sold for $8,772 per acre to Armour & Company. In March, 1935, the area was given us as 131.045 acres, and the acreage given in 1930 was 131.514 acres. Yes, we obtained a higher value for 1935 than we did in 1930. The zones are different in 1935. The following is a table showing zone changes and comparative acreage values 1935 as against 1930:

1935 Zone No.	1930 Zone No.	1935 Acreage Value	1930 Acreage Value
5	3	$ 3,500	$ 3,000
7	7	4,500	3,000
3	2	8,000	8,000
9	4) 9)	20,000	20,000
10	8	2,500	3,500
1	Part of 1	15,000) 17,500)	15,000) 15,000)
4	Part of 1	15,000) 10,000)	15,000) 10,000)
8	5	10,000	8,712
2	Part of 1	15,000	15,000

Trans.

Appraised as naked land.

1272 In the 1935 appraisal we appraised and considered the land as stripped of all improvements. Those
were also our instructions in 1930, and we did that.
Yes, I am aware of my answer in the 1930 hearing
and I may have been confused, but it was our
method at that time to appraise the land stripped
1273 of all improvements. Yes, we stripped off sewers.
I didn't give the sewers any thought at all other
than that the land was available to sewage to the
Platte river. In 1930 we valued the land for stockyards purposes or what it might be used for in
other industrial uses and we did the same in 1935,
and I also considered it as land, or valued it, at
the highest and best use, which I consider is the
1274 stockyards use. We considered the land as industrial land that could be used for stockyards, which

Appraised for general utility.

we construed to be the highest and best purpose,
but we also considered the area of the tract, the zoning ordinance, the factors that I have mentioned of
location, contour, of the ground, proximity to the
Blayney-Murphy Company and the various industries listed on page 4 of our letter of appraisal.
All of those are factors of value that we take on
the land. Yes, we considered that these lands are
available for other industries. Some time ago I
was called upon to appraise a large tract of land
that was in close proximity to The Denver Union
Stock Yard for the Burlington Railroad. At that
time they were trying to secure a large acreage for
some purpose which I do not know, but they wanted
a large tract. It was on the other side of Washington Street in a district very similar to the stockyards and we went over that tract of ground. There
were school buildings, houses, various improvements,
and it would have cost a great deal more to assemble
the land than we have appraised this ground, and
had I been in a position at that time to offer The
Denver Union Stock Yard property to the Burling-

Trans.

ton Railroad at anywhere near the value at which we had appraised it, which taking the whole tract, is something over $12,600 an acre, it would have made them a very desirable piece of property so that this property could be used for railroad purposes. That appraisal was just previous to 1930.
1276 I figure that the land would be suitable for smelters, a refinery or a tire factory. Yes, I think we could sell it for the value that we appraised it. Of course, I think that the easiest party to sell the land to would be to someone wanting to go in the stockyards business, and I believe that if the land was stripped of all the improvements, located as it is on main highways, with paved roads leading from all sections of the State to that direction, I believe it would be a very easy matter to secure some other stockyards to buy that property at the value at which we have appraised it. As far as selling it
1277 to a smelter or a refinery or a rubber factory, that would be very much like the example of the assembling of the Blayney-Murphy Packing Company in this immediate vicinity. There was a tract there 10 or 15 feet below grade, and if you would ask me if I thought I could sell that property for what I got for it, it would have seemed almost an impossibility, but the Blayney-Murphy Company bought that property and paid me a good value. If I were to drive out today to the Brannan gravel pit with a purchaser, he would probably say it wouldn't bring any value, yet with the knowledge and experience of years I know it is not going to be very long until we will have to pay to dump refuse and that there will be no places for city dumps. The tract has brought good value as a gravel pit and now it will bring a value for a dump. If you asked me today if I thought I could sell a

Believes land could be sold at appraisal figure.

Trans.

Believes land could be sold at appraised value.

piece of land, a large tract, in Denver for a subdivision, it might seem almost impossible, yet within the last three days a man has come into the office and asked me to find him 300 acres suitable for sub-dividing. Now these are all things that you have just got to trust to the future, but I believe
1278 that this ground could be sold at the value at which we have appraised it within a fair time, which might be a year or two years. If it could be used as a stockyards, I believe with my acquaintance with people in the stock business and certain people in the investment business, I could sell the tract within a period of not to exceed three months.

Zone 1.

Yes, referring to Zone 1, we appraised 3.6 acres at $15,000, because we considered it more compar-
1279 able to the land in Zone 2, which we appraised at the same figure. It is very similar land to that in Zone 2 and the access to the stockyards is by the subway which enters into the part of Zone 1 joining the Chicago, Burlington & Quincy Railroad
1280 near 46th Street. The 3.6 acres is a triangular piece of property paralleling the Chicago, Burlington & Quincy Railroad south of the south line of the stockyards building and adjoining the railroad on the west. It does not have accessibility. The traffic in there now comes over the Burlington right-of-way, but the accessibility to the land that we valued at $17,500 per acre (in Zone 1) either for stockyards or for another industry, in my opinion would center its activities from that point. Any industry other than the stockyards might rearrange their properties and increase the value of property, but as the land now stands, we consider that without the buildings and without the pens, it would be the point that people would improve and make a development of the tract.

Resp. Exhibit 4 admitted.

1281 For clarity, the map to which the witness had been referred, was marked respondent's exhibit 4,

Trans.

and by agreement of counsel was offered and received in evidence.

1282 Yes, the remaining portion of Zone 1 adjoins the triangle which I have just described and runs up to Zone 2. Yes, the greater part of the pen construction is on Zone 1, but Zone 2 is also under pens. Yes, Zone 1 is the most intensively used part of the stockyards. Our instructions were not to include improvements and therefore we have to give weight to the location, and the location to the stockyards of Lafayette Street and the entrance to the stockyards, makes that a center for an industry such as the stockyards or any other industry, and I believe that the remaining part of Zone 1 would
1283 be intensively used by any industry.

Yes, I considered Zone 2 and the triangular part of Zone 1 as comparable. They are similar lands, are practically on the same grade and have practically the same accessibility to a railroad. The Burlington Railroad is where a switch track could be run into Zone 2 or into this part of Zone 1, and the Union Pacific has a right-of-way on the other side of Zone 1. Zone 2 is accessible to other rail- **Zone 2.**
1284 roads. There would have to be switches put in for any industry but at the present time there are railroads running in or through the property, but they belong to the stockyards. Race Court is a public highway which touches Zone 2. There is no highway that touches Zone 1. The C. & S. Railroad is near enough to have a spur track built into Zone
1285 1, but it does not touch it today. I would consider all of this property located for industries so that tracks could be put into the property suitable for the type of industry that might wish to use the property. Yes, I know that the Burlington and Union Pacific have joint track agreement in the stockyards area and throughout other areas in the city.

Trans.

Highways an element of value.

As to how and why I think highways add value,
I had a talk with Charles D. Vail, Colorado High-
way Engineer, and it is summarized on page 2 of
the report. He went into more detail than we had
in that report. He explained how the cattle come
by trucks in increased volume, and because of the
roads there was a tendency for more people to come
to the yards than five years ago. 'If you have roads
1286 coming into a section and accessibility throughout
the State, whether it is for a stockyards or any
industry it would be valuable inasmuch as there is
more trucking business at the present time, growing
all the time, taking business away from the rail-
roads, and it is very valuable to have that accessi-
bility for any business industry. A rubber fac-
tory, such as the Gates Tire Company, can distribute
its tires all over the State by truck if it has good
roads, and I would consider it a valuable factor
in the value of the land. For a smelter it might
not be valuable, yet good roads might be valuable
for trucking the ore instead of shipping the ore
by railroad. I cannot answer the question as to
how many head of livestock has come to the stock-
yards on account of the highways. I repeat Mr.
Vail's statement that cattle which formerly went
to Kansas City and Omaha are coming here, and
also that a large number are coming from the south-
ern part of the State. I can't say whether the
influence was great or not, but only that in a gen-
eral way I would consider that it was a benefit.
It is beneficial to any business to have increased
1288 business. It creates values for adjoining land and
gives industry a potential earning power. Yes,
boiling it down it is my opinion that those high-
ways bring business to the stockyards, but as to
1289 whether that means profit, I do not know, because
I have no knowledge as to whether they are making
1290 money or losing money. The stockyards might

Trans.

be losing money there but another industry be placed there with roads and accessibility that I have spoken of and would find it beneficial. I will say this, that I think the highways, the accessibility and all those things lead to increased land values and that you base your land value on accessibility and the various things that I have enumerated heretofore. No, I would not say that that was only because it permits of making profit. I consider that land has a certain value as vacant land and that is what I have appraised it for, and with 33 years of experience in handling trackage property, —and I have handled a great deal of property for various industries,—you do not go into the economic conditions as you would for investment property.
1291 For instance, the Ford factory came into Denver and they wanted a certain location. They did not select that location on earning power; they wanted a direct line from the city of Denver to the railroad track and they explained their object that they wanted to be able to take people from the main part of the city in a Ford car, drive them out to their factory on a direct route and be able to demonstrate their car while they were going out there. Another man will have an industry that he will want to be close to the Union Depot. Take, for instance, this postoffice building when we assembled this property. The qualifications were from the Government that it was to be so many blocks from the Union Depot. An industry may want to be near another industry of the same character, and those are factors, and in selling land to industries there are certain factors that come in and they don't go into the economic but enter into our knowledge
1292 of selling real estate and trackage property. For instance, the Burlington Railroad had me assemble a block of ground for them between 22nd and 23rd on Market Street. I bought two corners. The eight

Trans.

lots on the inside I was two years finding that ground. They made me an offer of $40,000 for those eight lots. The people who owned them thought they were going to build a depot and began to raise the prices. The railroad didn't want the land for a depot but had in mind at that particular time that they were going to put up a refrigeration plant and increase railroad facilities. Afterwards the railroad changed their minds and the property was immediately sold at a profit to the American Steel & Wire Company, showing that you may have someone that wants the property for one purpose but it
1293 was sold to another for another purpose.

Our instructions from the stockyards was to give the land a fair market value and not to consider any improvements on the ground. We were similarly instructed in 1930 and to the best of our ability we followed those instructions.

Q. Did you in the present, the 1935 appraisal, give any weight to the fact that the stockyards was doing a good business or doing business at all?

A. Well, in 1930 we tried to keep away from that and think we did, but having had an experience of one appraisal we had been very careful, more careful in this appraisal to keep away from that than we might have been in the other. Now, I will not say that we did, but you have in mind all the time that there is an industry there and the whole thing is to keep in mind the use of the property for the highest and best purpose that it can be used.

Q. According to your testimony in 1930 you did give weight to the fact that they were doing a good business out there. I am reading now from your testimony, Page 894, you did give weight to the fact that they were doing a good business out there?

Trans.

A. Well, we appraised the land and we did not, I do not mean to convey that we took an economic idea of it.

Q. Did you do the same thing in 1935 with reference to giving weight to the fact that they were doing business?

A. I have been very careful in 1935 to avoid that because it has been impressed more by your cross examination and studying the testimony and the general knowledge that I know that we must keep away from that thought and the experience of the other appraisal has led me to be very careful this time not to get into that.

Q. You have been careful, did you succeed?

A. I don't know.

Q. You do think you gave some weight to the fact that they are doing business out there at the yards, don't you?

A. We have considered the property for the highest and best use.

Q. Yes sir.

A. And we have tried to comply with the Government regulations on the appraisal to the best of our ability.

Q. In the 1930 hearing at Page 895 of the record you testified that you gave very little weight to the earnings but gave much weight to the intensive use of the land.

A. Yes sir.

Q. Are both of those statements correct for your 1935 appraisal? Intensive use considered.

A. Yes sir, I gave thought to the *intensive* use of the land.

(Tr. 1293-1295.)

1295 (Witness continuing). Yes, I mentioned the Dotsero Cut-off and that livestock which heretofore went East is now diverted to Denver by reason of the saving in time. That was one of the factors, but I cannot give you any percentage of the extent to which it affected my values.

1296 The general situation with regard to real estate is that some properties have had a decided decline. If I could draw a chart I could get it on the record, but industrial property does not fluctuate as widely as investment property and residence property. The rent may go down for a period but the value of the property does not decline correspondingly, and I considered that in industrial property. I consider that industrial land in and about Denver has
1297 been more stable than other property. There has been very little selling between 1930 and 1935 and there have been very few industrial properties that have been forced to sell under mortgages as other properties have been, and therefore the properties have been about stable. There has been no industry located in Denver requiring a considerable tract of land between 1930 and 1935.

1298 Yes, I testified that in assembling the Blayney-Murphy tract much time was taken with the city and Blayney-Murphy finally agreed to pay the cost of a bridge of about $5,000 over Race Court and the effect of that was that it diverted the traffic from Brighton and the country in that section which used to go down Race Court over the new highway. It made a new thoroughfare near the stockyards. Yes, I believe it is more valuable and a factor to
1300 be near a main highway. No, if it should show that no one but the city paid the $5,000 it was not
1301 a recognized value of the stockyards land. We used the Blayney-Murphy sale to demonstrate a reflected

Trans.

value. An example of what I mean by that is that there have been no sales of land on 16th Street for a considerable time; the property is mostly owned by estates. If we found there was a sale of inside lots, and with our knowledge based on 33 years' experience in watching the City grow, that would give us an idea of values, and whether those values were going up or down in that location. The itemized figures in our report of the total cost of the land to Blayney-Murphy is to give the information of the expenses in sales made in that locality. Yes, among those items we have included $5,413.27 for railroad sidings, which I think are back of the plant. I wouldn't say that they are used wholly for packing house purposes but I don't know of any other purposes for which they might be used.

Yes, the viaduct or cattle runway runs up to the
1304 building, I think to the killing floor. From the conversation I have had with Mr. Murphy I don't think that it was put there for the particular purpose of getting the cattle to the killing floor. Yes, the viaduct starts in the stockyards and runs over the railroad tracks to the Blayney-Murphy plant. It is approximately 300 feet from the railroad right-of-way to the Blayney-Murphy plant, I mean there is about 300 feet of that viaduct on Blayney-Murphy land. They had to build the viaduct to get to their land and I suppose that if it was an advantage to build it to the killing floor, that is what they did. I don't know about the killing floor. I consider it a necessary element to get access from the stockyards to the Blayney-Murphy location. Yes, in the 1930 report we stated that the portion of the viaduct paid by the stockyards was $20,000; portion of the viaduct over the railroad was $11,000 and the portion of the viaduct from the railroad to the plant $9,000; I got those figures from Mr. Murphy who was an officer of the Blayney-Murphy Company

The Blayney-Mur[illegible]y tract.

Trans.

1307 at that time. No, I did not think then that the part of the viaduct over Blayney-Murphy land should be classed as a plant utility. I believe it is necessary to have a viaduct to this land to make it accessible to the stockyards and that was an element of the cost of the land. Of course, if the stockyards paid a portion of this amount it should be deducted from the cost to Blayney-Murphy Com-

1308 pany. No, I do not think that if we took the cost of land alone of $40,781.11 that it would affect my values of any zone in the stockyards property. This Blayney-Murphy tract is not comparable with the

1309 land appraised in the stockyards and is merely a factor in helping to arrive at values. No, I cannot say whether it affected my values one cent, one dollar or a thousand dollars. I do say that the valuation of the stockyards is very hard to establish by any sales that have been made in the immediate vicinity. There are a few sales that are comparable with the lands in the stockyards, and I have appraised the value of the stockyards by my experience and best judgment of this character of property. We considered the sale but I don't think you can appraise the value of the stockyards ground by sales that have been made in that vicinity. There are not sufficient sales to place a valuation on such a large tract of ground as that and it has to be appraised by experience and general knowledge of real estate values in this section and other sections of the city.

1311 Yes, we appraised Zone 5 higher in 1935 than we did in 1930 and the factors in reaching that value are the channel of the Platte River being widened and the flood control dikes being completed, removing any possibility of floods; and that there has been paid on that property by the stockyards, something over $1,500, a special improvement tax for the curbing since 1930. That curbing does not

Trans.

affect the value of the land for stockyards purposes
but gives an item of cost of the land.

No, I did not testify that we had paid little or
no attention to the sales of property. Where the
land was similar ground, we did consider them.
1312 On the Stadium property, for instance, the property
across the street was practically identical, and we
would give considerable weight to those sales. Yes,
I think we would have reached the same conclusion
as to value if we had ignored the sales on all the
property. Yes, we appraised Zone 7 in 1930 at
$3,000 an acre, and in 1935 at $4,500. In 1930 this
land was subject to overflow, and in 1935 that
danger was eliminated. I do not know of my own
personal knowledge that it was ever flooded. I
think the 2.34 acres in Zone 4 were flooded. Yes,
that is the same acreage that was called Tract 6
1313 in Zone 1 in the 1930 appraisal. It is located right
along the river in Zone 4. We gave the same values
to that acreage in 1930 as we did in 1935 because
1315 the conditions are about the same. The ground is
a little low there. They were working on the dike
in 1930 and we took that into consideration and
anticipated that improvement. Yes, we took that
into consideration in appraising Zone 1 in 1930. In
1935 we all submitted the appraisal to be influenced
by what we call freedom from flood in certain tracts.
Tract 7 is one of them. In 1930 the ground had
not been filled.

When I testified concerning the Burlington prop-
erty, I was talking of appraising the land and not
buying the land. I was merely giving the Burling-
1318 ton Industrial Agent an opinion on what it would
cost to secure certain lands for budget purposes
for the railroad company. Yes, a purchase was
contemplated. I don't think it would be ethical 781
to tell you just where the land is. No, the Burling-

Trans.

ton has not bought large tracts of land in the last 12 years; they have bought little parcels, but nothing to speak of, and those were bought through the land agent and I know nothing of their location or price.

Zoning Ordinance.

1319 Yes, I mentioned the zoning ordinance. I could
not say what influence it had on my value. I know
it has made lands in other localities very much
more valuable; for instance, one piece of property
I have in mind was sold for $2,500 before it was
zoned and after it was zoned for a filling station,
it was sold for $15,000. Another piece, before it
was zoned for a store, was sold at $1,500 and
after zoning was sold for $6,500. No, I wouldn't
say that zoning was toward a higher and better use.
It was from residential to business property. Yes,
there are instances where the zoning ordinance has
had a contrary effect. Residential property would
1320 be lowered if it adjoined business property. As to the
stockyards, there is only one piece of property in
Denver that is available for stockyards purposes
and that lessens the competition in property for
sales for that purpose, and when you lessen the
competition in property for any purpose, it creates
a higher value for that property for that purpose.
Yes, the zoning of the property for industrial B uses
would tend to depress residential property, and there
is residential property near the stockyards. The
stockyards land is where the winds blow to the
north and take the odors to the north. Naturally,
if residences are built near there, they bring a less
value. This fact adds to the labor situation for
the stockyards by giving employees rents at a more
reasonable figure and an opportunity to buy homes
at a less value than they would in other sections
of the city, which, in my opinion, adds value to
the land of the stockyards being so situated. I
1321 don't think single residence lots are comparable

Trans..

to the stockyards tract. I don't know just how much land is included in the industrial B district, but there is no tract in my mind in Denver the size of the Denver Union Stock Yards that is zoned
1322 for industrial B uses. Yes, I assembled the Blayney-Murphy tract. I think the people that sold got a good stiff price, but not more than the property was worth for the use to which it was put.

1323 Yes, I think the lands east of zone 10 are vacant. I would say that there is about 100 acres in the triangle on the map Government Exhibit 21 east of the platted land north to the Union Pacific tracks and east to Brighton Boulevard north of 49th Avenue. I wouldn't say that it is all vacant. There have been sales in there at very low values, but I
1324 don't think it is comparable land to the stockyards. Judging from the map that land is accessible to the Northwestern Terminal Railroad and the Union Pacific and the Chicago, Burlington & Quincy. York Street, which is a main artery to the city,
1325 runs through the center of the tract, and I don't believe it would be possible to cross that street for cattle or other industries.

1327 Q. Now, it is interesting to me, Mr. Newcomb, without taking the particular tracts unless you have to do it, just what the basis for your added values were over your 1930 appraisal?

Reasons for 1935 increased appraisal.

A. Well, we took each street and placed a value of what we thought that street or zone was worth today, and the result is an added value over 1930.

Q. What elements have given that added value for 1935?

A. Increase of population of the city, the better road conditions, general improvements

Trans.

of access to the stockyards from the city, paved roads and general wealth of the city is a big factor.

Q. And that has given this added value to lands whose highest and best use is for stockyard purposes, is it?

A. It adds an element to the increase.

Q. And those are the only factors that you had in mind when you gave a higher value in 1935?

A. Well, no, there were elements of value that we gave weight in 1935. In Zone 5 we considered the flood control, the channel being completed, the special improvement taxes paid on that zone, and in Zone 7 the completion of the fill along the Platte, and I think that covers it.

1328 (Witness continuing). As to our method of appraisal, when the committee met the first thing we did was to assemble the sales of all the property in the neighborhood, then we went out and inspected the sales and judged whether they were comparable or had any bearing upon the immediate vicinity of the stockyards. Where there was a sale which was comparable as in Zone 5 and adjoined the property, we gave weight to the adjoining sale. We gave weight to the sales of property opposite the Stadium property.

I first went out there with Barclay Ivins to show him the property that we were to appraise. I told him that I had appraised it in 1930, that I wanted him to go over every piece of property, examine the property and not express to me in any way his opinion of its values; that I wanted him to get an independent slant of the value of the property and

784 that when he had done that, we could get together

Trans.

and talk over values, and that is the way we proceeded. The only instance where values were raised as the result of discussion, as I remember it, was in Zone 8; it was raised to a value of $10,000 per acre from $8,712, as I remember it. Mr. Eppich and Mr. Ivins felt like Mr. Zelinski did that the property had value for a filling station or other
1330 business use and I began to realize that fact. In every other instance, such as the value on tract 5 and tract 10, the values were lowered as the result of the discussion.

Yes, we gave some weight to the sales on Lafayette Street in connection with the Stadium property. They had some reflected value, but I do not consider it comparable property. As Mr. Zelinski said, the property has business possibilities. No, that does not mean that the stockyards use is not the highest and best use. There is not enough business to take any amount of ground and use it for business. All the business that could be placed
1332 there could be confined to a small area.

Re-Direct Examination.

Yes, the sale of the Burlington shop tract was
1334 in about 1923 but I think Mr. Zelinski had in mind some other sales in another district where I know there have been a few sales. The Burlington shop tract is about two miles from the stockyards and is not similar land at all. It was sold at a very reasonable figure. It was a big tract that needed
1336 considerable filling. I bought some lots over there and it is not comparable land at all. It is all of a mile away, I may be stretching it on two miles. Yes, that is the only large acreage that I know of that the Burlington has bought.

As to the rail accessibility on Zone 2, the Burlington abuts it on the east, the Northwestern Terminal comes into it on the north and the Union Pacific 785

Trans.

1337 right-of-way touches it on the south.

Yes, I believe it is correct that the zones used in 1930 appraisal were such that Zone 1 then included all of Zones 1, 2 and 4 in the 1935 appraisal.

Comparable sales considered.

We did consider the sales of the lots on Lafayette Street opposite the Stadium and wherever the land
1338 was similar in our opinion. We considered the Hollis-Platt or Joe Murphy barn, and we gave consideration to the sales adjoining Zone 5, such as the Averich or Ruedy Products and Capitol Packing sales, and to the offers made by Burkhardt. We checked every sale that we thought had any bearing, in fact, we checked everything that we had covering every sale made in that section and then we began to take the sales and compare them and see if they were in any way similar to the stockyards property. No we did not rely exclusively on contiguous sales in fixing the valuation of any zone. We considered the elements which we summarized in our reports.

1340 On the area north of Brighton Boulevard, which has been described, there is considerable dumping going on. I would not attempt to describe the ground; I have been over every foot of it but it was some time ago and it is a big territory and I would want to check it.

The witness was asked to check the property following the recess and to report the next morning as to its comparability to the stockyards land.

1341 L. F. EPPICH, a witness called by the respondent, testified as follows:

Qualifications.

I am engaged in the real estate business in Denver and have been so engaged for 38 years, covering sales, rentals, building management, leases, insurance, loans and appraisals. I am a member of and past President of the Denver Real Estate Exchange,

38 years experience.

Trans.
1342 The Colorado State Association of Real Estate Boards and The National Association of Real Estate Boards. I have been a member and chairman of the appraisal committee of the Denver Real Estate Exchange at various times.

I have had an extended experience in appraising, having served on the committee which appraised the Railroad Terminals in Denver; on the committee that revised the values of the business district of the City of Denver for the then Assessor of the City and County of Denver; also made appraisals for the City and County of Denver in condemnation proceedings, notably the Broadway Extension; also for such organizations as The Denver Tramway Company, the Public Service Company, Fairmount Cemetery Association, the various banks of the city and other corporations and individuals. **Appraisal experience.**

I am, and have been for eleven years, the Loan Correspondent and Appraiser for the Metropolitan Life Insurance Company of New York City.

I am, and have been for twenty-three years, appraiser for the Equitable Life Assurance Society of New York City and for eleven years for the Jefferson Standard Life Insurance Company of Greensboro, North Carolina.

I have also served on the Building Planning Service Committee of the National Association of Building Owners and Managers, of which organization I am a member. These planning committees are appointed by the officers of the Association, as investors make requisition on the Association for a committee. The selection of these committees is based on the experience of the members. They study the proposed locations and buildings, particularly as to the economic values and desirable layout of the structures, making complete reports of their findings.

Trans.

I have served on assignments in Denver, San Francisco and Los Angeles, and taken part in assignments elsewhere.

Zoning experience.

I was Chairman of the Zoning Commission that prepared the Zoning Map and Ordinance for the City and County of Denver and have been a member of the Board of Adjustment—Zoning since
1344 February 11, 1925, when the ordinance became effective. I have served as Chairman of this Board three times.

I am, and have been for nine years, a member of the Executive Committee of the Denver Planning Commission.

Has made 4 appraisals of Stockyard Co. land since 1920.

(Witness continuing). Yes, I am the same Mr. Eppich who testified in the 1930 hearing. I have made appraisals of the lands of The Denver Union Stock Yard Company four times, including this appraisal. The first appraisal was made approximately in 1920; the second in 1925, the third in
1345 1930 and this fourth one as of March 23, 1935. We started our work on this last appraisal some time in February; I do not know the exact date but I think it was about the middle of February. Mr. Harry Newcomb and Mr. Barclay Ivins worked with me. Yes, respondent's Exhibit 3 is the written report of our appraisal and the first signature on the letter of transmittal is my signature.

Appraised land as naked land.

We appraised the land of The Denver Union Stock Yard Company as naked land with all of the improvements of the stockyards removed but with the packing houses and other improvements in the neighborhood in place. By other improvements I
1346 mean other related industries. Yes, we appraised the land on which the stockyards railroad tracks are located but in our estimate and appraisal the tracks themselves were removed.

Trans.

1347 The letter of transmittal states the elements of value which we regarded in connection with our appraisal, and the total value of the land as found by us, and in my opinion, is $1,645,552.50. Yes, I have with me the figures showing the appraisal and the acres involved in each of the other appraisals made by me. On January 22, 1920, the value was $1,157,579 for 139.709 acres. In the 1925 appraisal it was 132.867 acres and the value was $1,-
1348 308,940. In 1930 it was 131.515 acres with a value of $1,597,944.50, and in 1935 131.045 acres and the valuation, as I have stated, is $1,645,552.50.

1935 appraised value.

The zone figures as used in the 1935 appraisal do not correspond in all zones with those used in the 1930 appraisal. I was informed that the zones in the 1935 appraisal were those fixed by the Government Appraiser and we were requested to use those zones in order to avoid confusion.

Elements of value.

As an appraiser I feel that accessibility to highways and railroad transportation is an element of value to land for any industry, because it adds to its availability and usefulness and utility. In appraising the stockyard land I did not appraise it solely for stockyard usage. I appraised that land for any purpose of any industry for which it would be available and which might require a large area. Yes, I think I can give an explanation of why, in my opinion, these lands have consistently increased in value as shown by my appraisal since 1920. There has been an increase in values of adjoining lands, the increase of industry in that period, the increase in trackage facilities, the zoning, the increased population of the city and the State, the improved traffic or transportation facilities and the improved paved streets. Also the straightening of the Platte River channel has had an effect, because it has widened the channel of the river, confining

Reason for increase in 1935 over 1930.

Trans.

the stream to that channel and avoiding flood dam-
1350 age. Yes, I remember, in a general way, the relative location of the river prior to the establishment of the official channel. The old channel had numerous bends. I am looking at a map attached to my 1920 report. The river came into the north portion of Zone 7, as the land has been designated in the 1935 appraisal and swung over close to the Armour and Swift plants. This bend in Zone 7 extended over into Zone 6, then went into Zone 4 back of the packing plants, went through Zone 5
1351 and bent slightly northeast again into Zone 4. Part of it was in the old Coffin Packing plant site. The channel now is relatively straight and the bend at the south end has been eliminated. Much of Zone 4 at the present time on the east side of the river was either in the bed of the river or on the west side of the river. Prior to 1930 the banks of the river were not high because a part of the territory was subject to overflow. A part of those banks extending from a line back of Swift & Co. plant through to Franklin Street was started in 1929 or
1352 1930, and was completed some time later. It was completed along the northern end of Zone 4 when we made our appraisal in 1930.

Zoning Ordinance.

Yes, all the elements which I have mentioned are, in my opinion, elements of value for any use that might be made of a large tract of this nature. Yes, among those elements I mentioned zoning.
1353 The Zoning Commission was a committee that was appointed by the City Council in 1923 to prepare the zoning map and the zoning ordinance. The Board of Adjustment-Zoning administers the law.

(A portion of the Government Appraiser's report was read to the witness, being a portion wherein the Government Appraiser stated that "it would thus appear that the stockyards location, from a zoning ordinance standpoint, was so located as to

Trans.

be virtually the only location possible for such a utility.")

1354 I agree entirely with Mr. Zelinski's statement. I think it is possible, perhaps, to erect a stockyard in some other industrial B district, but not with the advantages that this land has for stockyard use.

Yes, there is a tract of land on the easterly end of B district coming down to Brighton Boulevard.
1355 I agree with Mr. Zelinski that the development of that area could not be made without considerable expenditure for drainage and other utility facilities. The eastern end of the Zone B district, which is out Colorado Boulevard, is two miles and it is a little better than half a mile north and south in width. Yes, I have inspected that land recently.
1356 Along York Street there are several industries such as serum plants, the Eaton Metal Products Com-
1357 pany and the Navy Gas & Oil Company. Toward the Colorado Boulevard end it is fairly level. York Street (running through the middle of the tract) is a through street,—(an arterial highway), and as a member of the Planning Commission I think there would be a very remote chance of closing York Street in any way. It handles a great deal of
1358 arterial traffic. The land south of Brighton Boulevard is pretty level but a great portion of it is in gravel pits and dumps up to Columbine Street. East of Columbine Street there are some more gravel pits and then unimproved land. In my opinion the land is not comparable in any way with the land of the Stock Yard Company at the present time.

Lack of highways not serious.

Yes, I noted Mr. Zelinski's statement that the present stockyards has no dedicated streets in it. As a member of the Planning Commission I know that it is easier to dedicate streets than it is to get them vacated. If a person has a piece of land and wants

Trans.

to sub-divide it, the City of course will accept the dedication of streets provided they coincide with the contingnous area, but it is always difficult to get
1359 a street vacated. From my experience and viewing the stockyards tract as naked ground, in my opinion it is an element of value not to have streets in a tract like that. The accessibility of the stockyards tract is excellent for any large industry, and by accessibility I mean roads, not necessarily dedicated. When roads are not dedicated the owner retains control of them but the public can use them. Therefore, I think it is very much better not to have so many
1360 roads in a large tract under one ownership. There are plenty of roads (dedicated highways) that come up to this tract. From the railroads' standpoint, it is considered terminal property.

Lack of roadways beneficial.

Zone 4.

Zone 4 is a long strip of land extending from the Colorado & Southern right-of-way on the south, north along the Platte River on the eastern boundary of the Platte to the old Coffin Packing plant location and bounded on the east by the Swift and Armour packing plants and the sheep division of the stockyards and goes up on the east to the railroad right-of-way of the Burlington and the Moffat Road or Northwestern Terminal. It is generally level except a portion of the north end nearest to
1361 the river. It is hard filled over most of the tract.

The Zone cuts into the Union Pacific at the southeasterly end of the tract. Viewing the entire area as naked land and as an industrial tract, I consider Zone 4 an integral part of that tract. I valued 16.382 acres of the zone at $12,000 per acre and 2.340
1362 acres at $10,000 per acre. My value of this tract is based upon its adaptability as trackage use. It is equal to a belt line in that all the railroads in Den-
1363 ver have a right to use it. It serves the packing houses and the sheep division and as I said before, is a level piece of land and is therefore very much

Local Beef & Mutton tract.

Trans.

more valuable than ordinary land without adaptability for trackage use. Yes, I mention in my report the Local Beef & Mutton sales, and also the Averich or Ruedy-Capitol Packing sales. The Local Beef & Mutton bought two tracts in 1920 and 1922 and paid $2,500 an acre. The Averich sales ranged from $2,584 per acre to $3,000 per acre in 1926. The Averich tract is very much better than the Local Beef & Mutton tracts, the latter being subject to overflow but none of them are as good as Zone 4 because the trackage facilities are not as good. The Local Beef & Mutton has the Moffat Road but the Averich has no trackage facilities.
1364 Neither of the tracts has any possibility of unified use with any large industrial development which might use the stockyards area. Improvements in the Platte River have not been carried beyond the City limits at Franklin Street, so that the Local Beef & Mutton tracts are now subject to overflow. Both the Averich tract and the Local Beef & Mutton tracts are across the river from the main stockyards area.

1366 to 1375 Witness then described the area between 52nd Ave. on the north, 48th Ave. on the south, Race Court & Brighton Boulevard on the west and Steele Street on the east, which the Government witness had impliedly indicated as possibly available or comparable ground. It was described as containing 35 to 40 acres of level ground and the balance either deeply pitted or used as dump—partly on fire.

1375 (Witness continuing). In my opinion there is not a single possible layout of a tract from 75 to 130 acres in this territory which is comparable in any manner to the lands I appraised for The Denver Union Stock Yard Company. I agree in toto with Mr. Zelinski that there is no other tract than the stockyards which could be utilized for any such purpose except at great expense.

Trans.

Q. Well, one final, general question: t
written report, respondent's exhibit 3, does t
report express your opinion of the value of
lands of The Denver Union Stock Yard C
pany as of March 23, 1935, based upon y
experience as an appraiser, your knowledge
the real estate condition in Denver and
various factors outlined in your letter of tr
mittal?

1376. A. It does.

Cross Examination

Present sale possible.

Yes, I think I could sell the stockyards la
today if they were vacated. My first effort wo
be for a stockyards industry, and as to whether
other industry could be found to take such a tr
that is a matter of effort on the part of the salesm
I think it is possible. Personally I do not th
that I would go outside of the stockyards indus
bearing in mind that the packing houses and rela
industries are all in place as they are today.
seems to me that it would require no partic
effort right in the city of Denver to secure a
chaser for that piece of land with all these o
industries in place. No, I did not say that I felt
1377 other industry would take 131 acres. After I
exhausted the stockyards chance it seems to
that an oil refinery, a steel mill or a smelter
something in the rubber industry might be fo
to use the tract. Yes, it has been some time si
any industry requiring 131 acres has located
Denver. I could not say just how long. The Ch
ber of Commerce' efforts in this regard have
dently not met with success.

Yes, my appraisal is at roughly $1,600,000
$12,500 per acre. No I am not familiar with
prices paid by the steel industries of the coun
for land when they locate in a new location, nor

Page Tightly Bound

Trans.

I familiar with the prices an oil refinery pays under such circumstances.

Yes, I speak of Zone 4 as serving the sheep division. In pricing the land I theoretically eliminated the sheep division from the yards but the land is available to serve those industries, and if the sheep division is eliminated, the tract is there to serve the packing plants and to get the benefit of the trackage. If the sheep division were removed, the tract would be served by the tracks of the Colorado & Southern on its right-of-way lying between Zones 4 and 6 and will be available for other indus-
1381 tries besides the packing houses. Yes, the transcript shows that I testified in 1930 that I did not strip the land of the sewers, but that was a mistake; I did not understand the question right. I was confused. After the 1930 hearing was over I saw that I misunderstood the thing entirely. What I thought I was answering was that the sewers that were off the district were available for the stockyards purposes; that is, the city sewers would be available
1382 for the stockyards purposes. Accessibility and utility are not wholly synonymous. Utility is the use of a tract. Yes, accessibility is one of the elements of value and utility is another. Utility also means usefulness but that does not necessarily mean the ability to make money. What I considered was the use to which the land could be put; the element of the ability of the land to make money applies to their use. I considered it in connection with the stockyards area from the standpoint of potential use. Yes, I mentioned the fact that the land was available for any industry but it is true that no industry within my memory has sought an acreage of that extent in the city of Denver. No, I do not know of any tract of land in the city of Denver outside of the stockyards area that would
1384 be available for an industry requiring 130 acres. Of

Trans.

course, if any industry wanted it we could get it and it could be gotten if an industry wanted it at all kinds of different prices depending on the location. No, not at the moment do I know of any place in Denver where I could acquire 130 acres at a cost of about $4,000 per acre.

Yes, I mentioned the increase of trackage facilities
1385 as one of the elements of value. I would not say
that was an additional value in my 1935 appraisal
over my 1930 appraisal. I use the phrase "increase
in trackage facilities" probably referred to expan-
sion, i.e. that additional trackage could be placed
upon lands owned by the Stock Yard Company. It
1386 is a potential increase. When I spoke of the im-
proved transportation facilities I had in mind the
highways. There are a great many more improved
highways in the last five years, and that adds value
to the stockyards land by reason of the fact that
more and more trucks are able to come in and
bring packing house products, cattle and sheep. I
am looking at it from the standpoint of capacity,
1387 not earnings. I am not referring only to cattle and
sheep. I say that the increase of highway facilities
to that piece of land increases its value to that in-
dustry that might be able to use that land. Yes,
it is my viewpoint that these improved highways
bring livestock to The Denver Union Stock Yards
and judging it from the standpoint that the stock-
yards use is the highest and best use, I think that
1388 the highways would naturally increase the value
of the land, but that is only a factor for potential
value of the property. I do not know anything about
the earnings of the stockyards. I know it is a good
concern and that it is in business but its earning
capacity has nothing to do with my valuation of
1389 the land. Yes, I mentioned in my report under the
head of "transportation" that livestock which here-
tofore went east is now diverted to Denver because

Highways an element of value.

Trans.

of the Dotsero Cut-off. No, I don't know how much
livestock did go east. It is merely a factor and
that information was gathered from the Rio Grande
Western Traffic Department. I don't know where
1390 the livestock went previously. As to the section
from which livestock comes now by truck, I have no
personal knowledge, but generally speaking I know
that it comes from the farms of eastern Colorado
and northern Colorado over these roads to Denver.
1391 I gave that factor some weight but I cannot state
the proportion. It is a potential element of value of
the land.

The list of industries on page 4 of our letter of
transmittal I would estimate had settled here
within the last 10 to 25 years. I do not know
definitely. I do not know what price they paid
for their land except the Blayney-Murphy, the Pepper plant, the Capitol, the H. & M. and the Local
1393 Beef & Mutton. Those have been reported as sales
in our report. Yes, in my work with the Committee
I secured a number of sales of adjacent lands. I do
not remember the number that I obtained from the
abstract company nor how many we discarded.
Some of them we considered as affecting our opinion
of the value of the land. Most of the sales which
appear after our letter of transmittal were considered in arriving at values, but some of them were
listed merely as an index giving one the opportunity
1394 of judging the value of the land. We listed 38 sales
that were considered in the value but sometimes
the sale, for some reason or other, the price was
less than the fair value and the sale was simply
listed indicating that we had considered them. As
an example, we considered Sale 1, which is the sale
from the Hollis-Platt Horse Co. to The Denver
Union Stock Yard Company. Yes, the sale of the
Hollis-Platt barn had its influence on the value of
Zone 1, but I could not say in what percentage it

Trans.

was a factor. No, I did not give it considerable
1395 weight. That is all I can say. The location of the Hollis-Platt barn has accessibility being close by Zone 1 by passing under the subway.

1396 Yes, in Zone 1 we broke that into two parcels, one containing 3.06 acres and the other 34.934 acres,
Zone 1. to the latter of which we gave a higher value. We
1397 gave a higher value to the 34.934 acres because it is a center of activity in the land. Taking for instance a sale which might be said to influence Zone 1, I think the effect of that sale would carry wherever the activity is about the same. A sale on the Burlington, for example, would carry clear across to the sheep barns because of the intensive use of the land and I think that would be my limitation rather than actual distance in feet and miles. Yes, I think the Blayney-Murphy sale was a factor on
1398 values which influenced Zone 1. No, we would not have considered that land on the basis of $40,000 instead of $80,000 plus. I do not see how I could
1399 have considered it that way. That is a manufacturing, packing house plant. If I assume that it was only a $40,000 sale instead of what our figures show, I don't think that would have affected my value of Zone 1. It is a hypothetical question. No, I don't think that a great many lands actually
1399 cost more than they are worth. Yes, it is my understanding that the Stock Yard Company paid for the part of the viaduct that is inside the stockyards limit, but that would not affect my setup of the Blayney-Murphy sale because I am simply figur-
1400 ing the cost of reproduction of the land area of the Blayney-Murphy plant. It required the cost of this viaduct, grading, etc. to make it comparable land in Zone 1. It required these structures to make it
1401 comparable. The item of $5,413 for railroad sidings on the Blayney-Murphy tract is included because it goes to part of the cost of preparing that

ans.

site for packing house purposes, and from the stand point of Blayney-Murphy I regarded that just as much an element of cost as I would the title examination, surveying and expense in connection with the purchase of a piece of land. I did not include the cost of the building because I was making a cost of the site and not the building and I think the railroad sidings go to the cost of the site. The officials of the company thought it was such because they gave us the information. These figures were furnished by the Blayney-Murphy Company and they furnished them as the cost of the site and not of the improvements, which I think is eminent-
2 ly proper. I do not consider the viaduct as a plant facility going with the building, but as part of the land value.

Yes, in connection with sale 5 in Zone 4 I show a cost of grading to stockyards level of $30,000. I obtained those figures from Mr. Neihaus, who was the land and taxation man of the Colorado & Southern Railroad. I don't know who did the grad-
3 ing. My only knowledge of the lease is what is shown on the statement. Mr. Neihaus gave me the information from the lease. Yes, I assume the railroad obtained access to and use of the unloading chutes, docks and so forth by means of the lease.
4 I am not informed as to whether the stockyards themselves do the unloading, and I don't know whether the railroad, by virtue of the lease, obtained certain rights and privileges that do not show in the lease, but I don't think that would affect the valuation of any zone.

5 Referring to the Blayney-Murphy land, yes I know there is about 300 feet of viaduct on the Blayney-Murphy land and that the viaduct goes over the railroad. I am not an engineer and do not know whether it would have been more economical to have constructed a subway under the railroad.

Trans.

Yes, our appraisal really contemplated that the railroad tracks are stripped off of Zone 4. Armour & Company has access from the Union Pacific line on the east side of the plant, but I don't know whether the only service tracks of Armour enter
1406 from the east side. As to Swift & Company, I don't know the distance but I would think that it would have a connection from the Colorado & Southern property to reach every service track of Swift & Company.

My estimate of cost of grading was not from personal knowledge but from what engineers have told me. The estimate was based on one small tract and that was some time ago.

1407 to 1412 The witness also testified concerning the Murphy barn sale, but since the government witness admitted that his figures were transposed (Abst. 136), this testimony is no longer material and is omitted.

1413 (Witness temporarily excused).

to 1434 HARRY W. NEWCOMB, a witness called by respondent, returned to the stand and testified concerning the impliedly comparable tract east of Brighton Blvd. and between 52nd Ave. and 48th Ave. He described its pitted condition, necessity for extensive fills, the burning dump heaps and the amount of the level ground. He stated that certain photographs (subsequently introduced as Respondent's Exhibits 47, 47a to 47l) accurately portrayed the area. Since the Secretary's final report lays no stress upon the tract, this testimony is omitted.

1435 MR. L. F. EPPICH, a witness previously sworn, returned to the stand.

Cross-Examination continued.

Trans.

Yes, I carried the Murphy sale on a figure of $16,000 for the land and $6,000 for the improvements, while Mr. Zelinski carried it just the other way.

Murphy Barn sale figures reversed in Govt. appraisal.

Re-Direct Examination.

In my memory in Denver it is a fact that industries have not started by requiring 130 acres of land. They have started in a smaller way and ex-
1436 panded as the businesses expand. That is personally true of the stockyards industry and of the Denver Rock Drill.

Land appraised from general utility standpoint.

Yes, I considered and viewed this tract from the standpoint of general utility use and possibly its sale in smaller tracts if necessary. Yes, I believe that over a period of time the tract could be sold either as one big tract or cut up into small tracts.

1437 Prices paid 15 to 25 years ago may have a bearing upon our appraisal in this respect, using for example the Pitkin tract, which was sold more than 25 years ago for $4,375 an acre and that is part of Zones 6, 7 and 8. The development of the neighborhood and the territory, and increase of industries during that period, are all facts in the increased values of the land. I would not base today's price on a cost of 30 years ago, but simply as an indication that the land has become more valuable in a period of time and of the increased facilities. Original cost would be merely an index as to whether or not my present value was up or below original cost and I think that is the only extent to which
1438 I would use it. In purchasing ground for an industry I would not just buy enough, I would consider the expansion ground if I had an industry that I expected to enlarge. Yes, as an appraiser I deem it necessary to carry in mind the possibility of expansion ground.

Trans.

Highway accessibility valuable to any industry.

In stating that highways were an element of value in land, I did not intend to confine it to livestock in the use of highways. They are valuable to any industry. When I spoke of Zone 4 I testified that it was valuable as the possible trackage location for any industry, but I did not mean the existence of actual tracks in place now, but the possibility of tracks.

I couldn't state in percentage what weight I had given to the sales of contiguous property compared to the weight I had given any other element. Zoning has a considerable weight, and I think that sales of contiguous property might have greater weight on one Zone than on another. My appraisal and estimate of values is the sum of all the factors, the advantages, the sales, my experience and the knowledge of the value of property all considered.

1441 Yes, I am pretty well familiar with the values of property throughout the city, and my experience has been citywide.

Counsel for respondent then renewed his offer of respondent's exhibit No. 3, being the land appraisal.

MR. MILES: To respondent's proposed exhibit No. 3 the Government objects on the ground that it is shown by the examination of the witnesses that they have not complied with the law pertaining to valuation of real property as laid down by the Minnesota Rate Case.

MR. BOSWORTH: If any argument is made on that, it seems to me thoroughly apparent from the Government witness Zelinski, as well as from our own witnesses, that they proceeded in this matter on the same theory, namely, viewing the land as naked land, and that was not denied by any of the witnesses, and I therefore submit that it is a proper exhibit.

rans.

MR. MILES: No argument.

THE EXAMINER: Objection overruled. Respondent's Exhibit 3 will be received.

Resp. Ex. 3 admitted.

443 HARRY JAMISON, a witness called by respondent, testified as follows:

I am in the cattle business and live at Navajo, Arizona. I have been in the cattle business 25 years,—in the ranch business, raising, growing and aging cattle. My herd is from four to five thousand head, that is, I market every year about that
444 number. My ranch is all leased and deeded,—about 150,000 acres.

Yes, I am familiar with the marketing of livestock in general and with the Denver market in particular. The shipper sends his livestock to market to sell them and he is certainly interested in the buyer outlet and the development of that outlet is a thing of value to the producer in my opinion. The producer always figures that the more buyers you can get the better price he is going to get for his cattle. That has always been my opinion of it. Yes, the yard traders or dealers are certainly a part of that buying outlet on the market and are
445 certainly beneficial to the producer. I have had the same experience as the other witness, who testified that the traders sometimes were the only market.

Shipper interested in buyer outlet.

Traders part of buying outlet.

Sometimes trader only market.

Q. Now, there is apparently a viewpoint on the part of the Government which perhaps is not properly described as an attack necessarily, that the yard trader receives a certain measure of free service at the market. In your estimate, or in your opinion, does the yard trader or dealer receive free service, or is that included in some manner in the charge which the pro-

Trans.

ducer pays as a marketing charge for the privilege of the market?

A. Well, I think that is all taken care of with the producer; he pays his yardage, and I do not know why the other fellow should; you should not have to pay to buy, the man who is selling is the one who pays usually.

No proper charge on buyer.

(Witness continuing). A big per cent of the traders' operations at Denver are in the nature of
1446 order buyer transactions. I don't think that the fact that he may keep his livestock in the yards for a longer time than the ordinary feeder buyer shows that he is receiving any free service. My impartial viewpoint absolutely is that since he is on the market buying and is a necessary part of the buying outlet, he should have whatever is necessary for him to complete the operation without additional charge. The yard trader buys all kinds of livestock. There are times when he is a competitor for fat stuff and then he buys chiefly in carloads. Sometimes they buy in carloads because they think the stuff is worth more and at other times because they have orders for it. Yes, the yard traders increase the competition on the market and in doing so compete with the packers on fat stuff. That surely tends to hold up the prices and I know that of my own knowledge. At other times he assembles odd-lot stuff and makes up carloads. I do not know what we would do without the yard traders.

Trader charge not warranted.

Trader essential part of buying outlet.

Trader helps maintain price level.

1447 Q. Now, in the 1930 hearing, Mr. Jamison, we had here investigations of the rates, the order of the Secretary came out with what was then called the half yardage charge to traders which was figured at about half the charge which the Secretary found in his order to be
804 the full charge which should go against the

Trans.

producer. In recent hearings over the country and recent orders of the Secretary, there seems to have been a change and it is now spoken of as a reweigh charge. In your opinion if any such charge, whether it be a half yardage charge or a reweigh charge, who in the long run, in your opinion, would pay the charge?

Producer would pay charge against trader.

A. The producer.

Q. And your position is, as I understand it, that the producer is already paying for what service is given to the yard traders.

Charge on trader lessens competition.

A. Yes, sir.

1449 (Witness continuing). It would lessen the competition on the market to charge the traders for reweigh or yardage or whatever you call it. Present price on a thousand pound steer is from 10 to 12 cents a pound, or from $100 to $120 gross. The effect of the charge would be determined by the year's business and not the individual case. If you assume that it might amount to $15,000 to $20,000
1450 a year, it certainly would lessen competition on the market.

Effect of charge determined by year's business, not by individual case.

Q. I am going to ask you a rather broad question, Mr. Jamison, one of policy for your opinion: in your opinion is the producer better off to maintain or to have maintained through the present rates the existing competitive situation and the buyer outlet on the market than to have that situation jeopardized by a reduction in rates?

A. I think the producer is better off to have them stay right the way they are and pay the regular charge that they have always paid and leave the gate open for the buyers. The more buyers we have got, the better off we are.

Charge on trader not warranted.

Trans.

The Denver Show.

(Witness continuing). I have been familiar wi the Denver Livestock Show for twenty years; think it is the greatest thing they have ever ha to improve the breeding of cattle and general co ditions.

1451 Q. In your opinion has it had any effe upon the, you might say, the advertisement the western, you might say, mountain type cattle?

Show benefits producer.

A. I think it is about the only advertiseme we have ever had that has done us any good.

Q. Do you know or can you state wheth or not buyers have been attracted to the mark who have become permanent buyers, say, your livestock?

A. They sure have, lots of them.

Q. And have been attracted by reason the Show, you feel?

A. Yes, sir.

Has bettered price.

Q. Do you think the Stock Show has h any effect on prices paid for cattle?

A. It certainly has.

Q. In what way and to what extent do y feel that?

A. Because it has encouraged the people raise a better grade of cattle and natural they bring better prices.

Prices higher during show.

(Witness continuing). Prices are usually abo $1.00 a hundred or $1.50 a hundred better duri the Stock Show than they are at other seasons the year. Cattle are held off the market for t show. There are always quite a number of catt held back for the Show because they know the buye

Trans.

are going to be here and the buyers know that the cattle are going to be here and consequently there are lots of cattle held back off the market when they have got about all they can handle anyway. The owners hold these cattle back and ship them in here during the Stock Show and they are sold. It has a tendency to keep down what we call a "glutted" market. Yes, I have bought and sold livestock at the Denver Show during Show week. To my knowledge cattle are brought to Denver by the Show which could not come here otherwise. If it wasn't for the Show they would probably go to other markets, at least a percentage of them. Yes, I guess Denver is the largest market on carloads of bulls in the country. I have bought carloads of
1453 bulls here on order myself.

Livestock held for show.

Show prevents glutted market.

Show means increased business.

Q. Now, does a person in the country who doesn't come to the Show in your estimation get any of the educational benefits, and if so, how?

A. Well, you know the neighbors that come, they go back home and tell them what they have seen at the Show and of course a man that stays home, he never sees no cattle but his own, and he naturally gets to thinking that they are the best there is, and if he takes a trip, say, to the Denver Stock Show and sees the cattle up there, he is liable to go back home and say, "Our cattle aren't near good enough, we have got to do something to improve our cattle. We thought they were good, but they are not nearly as good as I saw at the Show." That is the general talk of visitors when they go back home.

Show benefits those who do not attend.

Q. And also isn't it true that he perhaps sees a neighbor's cattle that have been improved by that neighbor's observations of the Show

Trans.

and he immediately starts in?

A. That is where it does the good.

Feeder auction in Denver yards.

(Witness continuing). Yes, I am familiar with the feeder auctions here at Denver; lots of feeders are sold at that auction. There is no argument about it, more feeders are sold at Denver during Stock Show Week than any place in the United States. No, such an auction could not be held at the Denver yards at any other time; they wouldn't have a buyer, the buyers wouldn't be here and it takes buyers to make an auction. Yes, the buyers are attracted by the Show and to my knowledge buyers come from as far east as Ohio.

Show only reason for increased business in January.

1454 The big range movement of cattle is generally over around the first of December, and there is not
1455 much fat stuff starts back before the middle of February or the first of March. No, there wouldn't be any reason except the Stock Show that would make the receipts of cattle during January at Denver larger than they are in the month of December. If it wasn't for the Show they would be less.

Cross-Examination

Show attracts buyers.

There are lots of buyers attracted to the Denver yards by the Show but I wouldn't say how many. As to educational methods, we don't have so many; there is an agricultural school at Tuscon, but I don't think they do very much along the line of better cattle. No not all of the improvement in livestock in this locality, and in my own State, is due to the Stock Show.

I don't believe there is any difference between the trader and the order buyer, at least, I couldn't
1457 say there is any difference. If you can show me that there is a difference, there might be a difference in my testimony. Yes, I know that the order buyer buys on an order while the trader takes title

Trans.

to himself and sells wherever he can. No, I do not market all my livestock at Denver; I sell lots of my cattle at home at the ranch. I suppose I sell half of it that way. There are lots of times when northern buyers, who are my regular customers, buy 2,000 or 3,000 cattle to one man; that would be a lot of cattle to put on the market, and in that particular case I find it to my advantage to sell direct. I suppose I have been around the Denver market here a third of my time. Yes, I know that the trader makes his money by buying at the lowest possible price and selling at the highest possible
1458 price. Yes, I testified that the trader would compel the shipper to pay the yardage charge. As to how he would do that, he has got a lot of people that
1460 keep him right up in line with the market. He can't buy them under the market, you know. There is a lot of competition, and if there is a lot of competition on the market, he is not going to steal them. No, he won't pay over the market if he can help it. It would be a small percentage of the cattle bought
1461 by the trader that is put back on the Denver market to be resold, but I would not know the number exactly. I would say from 10 or 15%. I don't know of a single instance where the yard trader put his cattle back the next day to be sold by a commission man. He sells them himself. Yes, possibly there might be competition with fresh arrivals if the fresh arrivals were the same kind
1462 of cattle and everything. No, I wouldn't think that would tend to depress the price. The big arrival is usually on Monday, and aside from the order lots, or the cattle that is being picked up here and there and finally sorted into carloads, a big per cent of the carloads of the stuff that is bought by the trader on Monday's market is sent
1463 out the same day on orders and to different markets. Assuming that the trader is acting only as

Trader competition with fresh arrivals not serious.

Trans.

a trader, he would probably sell to some of the order buyers that the commission men employ. Yes, in some cases the order buyers would bay the fresh arrivals, so there is some competition with fresh arrivals.

As far as the service the traders receive is concerned, he has pens allotted to him and he buys his
1464 hay the same as anybody else. That is about all I can say that he gets. Yes, it is my opinion that he does not pay for those pens; he pays for his hay and he pays for everything that he gets. Yes, the producer pays for his hay and also pays for the pen space by way of a yardage charge.

Q. But you would make the difference, then, between the shipper and the trader?

Trader benefits shipper.

A. In my opinion the producer, if the trader wasn't there, there would be a lot of days that he might have to feed them three or four days, and by not having the traders on these markets, if a producer shipped his cattle into the market and he had to wait for a farmer or somebody to come in and buy the cattle, he might have to feed them three or four days. For my part I would rather pay the yardage charge and get my cattle sold the day they are offered, the first day they are offered on the market, and then if the trader has to keep them, he has to pay for his feed.

Producers and traders both necessary to a market.

Q. That is correct. But do you not recognize that the producer is of more importance to the yards and the industry than the trader?

A. Well, we have got to have both of them.

Shipper should pay all charges.

Q. Surely, and you think that the producer should pay all of the charges?

810 A. I do.

Trans.

1465 (Witness continuing). My opinion is that the yardage charge would come off of the producer any way. I think most of the traders would quit if the half charge was imposed upon them. No, I am not familiar with Chicago. If it is true that Chicago has a half yardage charge and the traders did not quit, that might possibly change my opinion, but I know that Chicago is a different market from Denver, and has a different class of cattle. They handle more fat stuff. As to a charge at Omaha, I still think the producer would have to pay it, probably 50 cents a head instead of 35; I am not familiar with the prices paid at Omaha.

Producer would pay charge on trader.

1466 *Re-Direct Examination.*

Denver is a different market from Chicago or the River markets. We have more feeder cattle and stuff of that kind than they do on the eastern markets. Yes, the slaughter at Denver is relatively lower than at the River and Chicago. We are a transit or a transportation market and more or less of a concentration point on livestock.

Yes, I know that the Denver market has constantly grown in its buyer outlets. Yes, I know that has been a benefit to the producer.

1467 I think the Stock Show has had more effect in arousing more interest in livestock than the agricultural college or the county agent. Yes, surely, the agricultural college works with the Stock Show.

MERLE M. MITCHELL, a witness called by respondent, testified as follows:

1468 I am engaged in the livestock business at Brush, Colorado. We produce and feed cattle and sheep. We raise about 5,000 lambs a year and we run a cow herd. We generally feed about 25,000 to 30,000 lambs every year and run from 1,000 to 1,500 head

Trans.

of cattle. No, I am not a member of any livestock asssociation.

The Denver Show.

Yes, I am familiar with the Denver Stock Show and have been familiar with it for 16 years. I have been in the livestock business all my life. Yes, I patronize the Denver market both as a buyer and a seller. When I say that I have been in the livestock business all my life I mean about 30 years. I think the Denver livestock show has been the
1470 biggest benefit, the biggest advertisement for the western cattle of anything that could happen in this western country, and I think that benefit covers the industry in the western states and is not limited solely to those who attend or exhibit at the Denver Show. It has a tendency to draw people to this country to buy up cattle other than at Show week, and that has resulted certainly in the increase in the buyer outlet.

Show benefits the industry as a whole.

Personal proof of benefits of show.

Yes, from my own experience we have customers who now buy from us direct whom we first made contact with at the Denver Show. We ship cattle to Indiana, also to Ohio and Missouri to people who came here to the Show whom we got in contact with. I think that situation is very general among the traders and producers and has brought into prominence the Rocky Mountain type of animal. It sure has created a demand for that type at all times of the year.

Show has created year-round demand.

As to prices, take Stock Show week these cattle would bring anywhere from 75 cents a hundred to two dollars a hundred more than they would the ordinary week before or three weeks before or possibly three weeks afterward, and the producer sure receives that additional price.

Show results in increased business at yards.

Yes, to my knowledge livestock is held off the market for the Show. I hold my stock off year
812 after year waiting for the Stock Show week to

Trans.

1472 come. I think that if it were not for the Stock Show week in Denver, there would be times that your market would be just kind of glutted with cattle and would have more cattle than it could handle. The effect of a glutted market is that the producer would try to find some different market to put his cattle in. No, I do not think that the cattle would come to Denver at other times of the year if you did not have a Show. There would be a certain percentage of them that would come and I think there would be quite a few cattle that would

Show prevents glutted market.

1473 not come here that would go to other markets. As to bulls, it is known through the southwestern and northern cattle country that Denver is the best place to buy bulls in the United States during the Stock Show week because they assemble more good bred bulls at that time and people can come here and see maybe a thousand or fifteen hundred of them in two or three hours, if they wanted to look at that many, and if you had to drive over the country, it would take thirty days to get what he really wanted. Yes, there are State regulations covering bulls. In Colorado you cannot turn a bull loose on the range or on the forest reserve unless he is a registered bull and a good individual with it. I have had a little experience myself with that. He has to come up to certain specifications and you cannot turn him loose unless he is registered and is a fair individual. I think there are these same requirements in Wyoming and Montana.

Benefits of the bull market at show.

1474 Yes, I am familiar with the feeder auction at Denver. It is the largest auction in the United States by far, I guess. Stock Show week is the most probable time for an eastern man to buy his cattle that he is going to put to graze in the Spring. He buys a few carloads to finish out on corn and blue grass. Yes, the Stock Show brings the buyers to Denver, and unless there was a concentration

The feeder auction.

Show brings buyers.

Trans.

of buyers, I do not think that such an auction could be held. In other words, I figure you have got to have the buyers or you couldn't have that kind of an auction, and the buyers have to come from a lot of States to take the cattle in as big runs as they have there at Stock Show week. I don't think the buyers would come here in numbers like they do at Stock Show week unless it was for the Stock Show.

Increased business due to show.

As a rule, comparing one year with another, the range movement of grass-fed or mountain grass fed cattle, would end the latter part of November or the first part of December. A good many of those cattle go into the feed lots for finishing or grain and come back to the market, some in February
1475 but mostly in March and April. Yes, those that come back in February would be known as short
1476 feeders. They would have to be somewhere between a packer animal and a feeder when they were bought. Yes, that is what was formerly called a
1477 "two way" animal. If it were not for the Show, receipts for January would be very much lighter than they would be in December.

January receipts due to show.

Traders essential to producer.

I think the development of the buyer outlet and the buyer outlet is one of the most important things; it is practically as important, if not more important, to have these order buyers or yard traders as it is to have the packer buyers from the producers' standpoint. It would be a great thing if they could get twice as many buyers on the market as they now have for the man who is producing the livestock.
1478 Yes, I heard Mr. Jamison say the more buyers the better off the producer is and you bet I subscribe to that. I like a lot of them when I come to town any time. Yes, the yard trader is very much of a valuable asset to the producer whether he buys as an order buyer or for himself and gambles on the market. In fact I wouldn't want to ship cattle to

Won't ship to market without traders.

Trans.

a market or any place unless I had competition like a yard trader or a speculator or an order buyer with the packers.

As far as my feeling goes on the question of whether the yard trader uses pens for a longer period and whether he should be charged for that, I think it is the producer who pays that and in order to have your competition your yard traders and order buyers can't be charged a yardage on their cattle. It looks to me as though they would have to quit business. I don't believe a yardage charge could be put on at Denver as it may be in
1479 Chicago without hurting the market. You take the Denver market as compared to the Chicago market. You are practically at the end of your string in the Chicago market and that is about the last market you can ship a feeder steer to or it is the last one I ever shipped one to anyway, and I have shipped a good many thousand. I have an idea they could do things at Chicago that they couldn't do elsewhere. I think they do that anyway and get away with it. Yes, I heard Mr. Jamison testify that he thought the charge would come out of the producer anyway. Where else would it come from if it didn't come out of the producer? He has got to pay it all anyway. I think the charge, whether on the order buyer or the trader, would revert right back to me.

Charge on traders would destroy competition.

Chicago not a criterion.

Producer would pay charge on trader.

Cross Examination.

1480 Yes, I think a certain percentage of the traders would leave the yards if an extra charge was imposed upon them. I am not familiar with Omaha, although I ship a good deal of livestock there, but I really would not know what effect the reweigh charge has had down there. I don't believe they are paying it down there. I just had a conversation with a commission man from Omaha last Saturday

Trader not paying yardage at Omaha.

who was at my place and I am under the impression
from his conversation that they are not all pay-
1481 ing yardage down there. Yes, they may have to
pay it in time. Yes, if there has been no decrease
in traders it might affect my opinion. I do not
know for sure if there has or hasn't been.

Yes, I know the rule about registered bulls was
made by the Department of Agriculture and the
Forest Service. I don't know whether it was made
from their own studies. Maybe they got some of
their schooling from what they observed, like my-
self, through our Stock Show advertisement.

1482 We handle from 4,000 to 15,000 cattle a year,—
it varies, and I expect we ship that number and
sometimes more. We handle from 50,000 to 100,000
to 250,000 head of sheep. No, I do not sell all
those cattle and sheep at the Denver yards. We
are east of the Denver market with our lambs and
can't come back this way with them when they are
fat. We have to go to Omaha, Chicago or St. Joe.
1483 We have a good many cattle through Denver, I
would judge around 1,500 to 2,000 head. Oh, I
expect there are some shippers who do not patron-
ize the Denver Show but there are very few in this
western country that don't patronize it. I expect
there are mighty few cattle men in this western
country in this locality that ship cattle to the Den-
ver market but what have cattle here Stock Show
week. I couldn't name you one and I know several
hundred producers over the country. Yes, I think
the producer who don't come here Stock Show
week should pay part of the Stock Show expenses
because I think his cattle will bring more money
through the advertisement of this Stock Show, like
fellows from Indiana and Ohio that come here and
buy these good cattle. I think that is the biggest
1484 advertisement that our western country has got.

Producers patronize show.

Producer benefits though not attending show.

Trans.

I know a lot of people back at Schleswig, Iowa, and I think it is just the last six or seven years that they have gotten to come here buying their cattle, and it was through the cattle that went from the Denver yards back into that country that made them see how they fed out and the growth they put on and the way the cattle finished out. I have received a personal benefit of many thousands of dollars worth in the sale of cattle from the Stock
1485 Show.

Personal proof of benefits of show.

Re-Direct Examination.

No, I do not know how long the tariff in Omaha has been in effect, and I do not know the date of the final decision in the rate investigation there.
1486 Yes, my shipments to the Denver market are fairly regular throughout the year. Yes, every year I hold back livestock for the Denver show, but I have shipments on the Denver market pretty near every week.

L. M. PEXTON, a witness called by the respondent, testified as follows:

1487 I am Assistant General Manager of The Denver Union Stock Yard Company. I first entered this service in 1924 as Traffic Manager. In 1928 I went to Oklahoma City as Manager of the Oklahoma Stock Yard Company at that point. I returned to the employ of The Denver Union Stock Yard Company as Assistant General Manager. I first came to the Denver yards in 1915 as Cashier for the C. B. & Q., the D. & R. G. W. and the D. & S. L. In 1917 I was promoted to agent for these companies. In 1918 I was appointed joint agent for all roads entering Denver at the Denver yards, holding this position until employed by the Stock Yard Company in 1924. Yes, I was located in Denver prior to the major changes in the yard which were made in 1917. It was part of my duty

Qualifications.

Trans.

to supervise the handling, the loading and unloading of livestock from a railroad standpoint during the period 1915 to 1924. Yes, I am familiar with the changes made in the yards in 1916 and 1917 and since that time. I was out over the yards practically every day, was here prior to and during the construction of the first sheep barn, the tracks along the river, the river chutes, the extension of
1488 the Burlington chutes, the building of the U. P. chutes, the extension of the cattle yard, the building of the new Exchange Building and other changes made at that time. I was also here during the building of the new sheep barn in 1929. The only development or additional construction which occurred while I was not here was the building of a few cattle pens in 1928. That was when I was vice-president and manager of the Oklahoma City yards. Yes, it is a part of my duties to know and study the territory from which the Denver market receives a majority of its receipts of all kinds of livestock and I am familiar with that territory. I make frequent trips all over this territory and have for many years. I attend numerous livestock conventions, visit daily with livestock producers, keep in touch with local conditions in all our territory,
1489 and generally try to keep informed on live stock conditions, weather conditions, range conditions, feed conditions and other matters which may affect our business. During the past year I have been over our territory in Nebraska, Kansas, Colorado, Wyoming, Idaho, Utah, Oregon, Washington, New Mexico and Arizona. These trips are usually made by automobile with frequent stops made to visit and consult with bankers, producers and anyone
1490 else interested in the livestock industry. For more than 20 years my entire time and experience has been with stockyards, the livestock industry and transportation intimately connected with the indus-

Trans.

try and with stockyards. I am a licensed practitioner before the Interstate Commerce Commission.

Receipts defined.

Yes, I have heard the testimony of the Government witnesses in this case. Dr. Dozier testified that when he spoke of receipts he was speaking on the basis of figures given him by the Yard Company. By "receipts" we mean all livestock that is "booked in," so to speak, at the Denver Stockyards, no matter how received. Receipts are by no means the same as sales. "Sales" refer to the livestock which is actually sold on the market, while "receipts" includes, in addition, through shipments which merely stop for feed, water and rest, as well as shipments which try the market but for one reason or another do not sell.

Receipts and Sales not synonymous.

I have an exhibit showing the percentage of sales to receipts at the Denver market which has been marked for identification as respondent's exhibit 5, and is entitled "Receipts and Sales of Livestock at the Denver Market for the years 1913 to 1934, Inclusive." This shows receipts and sales of cattle, calves, sheep and hogs separately and the percentage of sales to receipts of each species at the Denver market during that period.

1491 Yardage, or, as it is properly called, the marketing charge, is not charged at Denver on shipments which do not use the privilege of the market and do not sell for various reasons. It obviously would be impossible and improper to collect the marketing charge on shipments feeding at Denver to comply with the 36-hour law while moving from range to range, range to feed lot, or from point of origin to another market, because such shipments do not use the market. There are numerous central markets east of Denver, which, in the past, have received the majority of the fat livestock from the west. To attract this business, it has been neces-

Marketing charge.

Trans.

sary to grant the same arrangement on this traffic as on traffic handled for the railroads. If a charge were made regardless of whether the livestock sold or not, many shipments would not come to Denver.
1492 If a yardage charge were made on shipments handled for the railroads for feed, water and rest under the 36-hour law, other feed yards would be built adjacent to Denver or the livestock would be fed at other points. We have found this practice materially increases the amount of traffic trying the market and actually selling.

The year 1934 includes arrivals of substantial numbers of government cattle, calves and sheep. The year 1933 includes government pigs. 1933 may be considered normal *at this time* for cattle, calves and sheep, and 1934 for hogs. It will be noted the cattle average for recent years is from 83% to 93% sales of arrivals. An average for the future would be about 87%. With calves, the per cent is from 76 to 90, with about 82% to be expected. Hogs have gradually been going down as California has become more active in purchasing in our territory and has been using Denver as a feeding point. Yardage was collected on 64% of the hog arrivals in 1934, this including packer directs, which pay yardage. Sheep have steadied off to an average of about 74%. When I say that yardage is paid on packer directs that is because at Denver we have a contract with the packers which provides they shall pay yardage until the year 1936.

1493 Respondent's exhibit 5 shows the progress which has been made over a 20-year period in increasing the percentage sold at Denver. In 1913 the percentage of cattle sold was 51%. 20 years later, in 1933, that had been increased to 93%, or in effect, from a revenue standpoint, it was an increase in receipts paying the marketing charge of about 80%. Calves increased from 57% sold in 1913 to

Trans.

76% in 1933 and, at times, have run as high as 100% sales. Hogs, because of California direct buying, have decreased from approximately 100% in 1913 to 70% in 1933. Sheep increased from 39% sales of 620,431 head in 1913 to 71% of 2,902,316 in 1933. All of these have been caused by increasing buying demand at the Denver market, by development of the market in various ways, as shall later be covered.

Increased percentage of sales due to development of buying demand.

Respondent's exhibit 5 offered in evidence. By stipulation of counsel, right to object was reserved until after cross-examination.

Resp. Exhibit 5 offered.

1494 Yes, I testified that no shipments pay the marketing charge unless actually sold with the exception of packer directs. The packers pay full yardage on their direct slaughter at Denver due to their contract relationship.

The receipts at Denver vary very materially. I have prepared an exhibit concerning this, which has been marked for identification Respondent's

Peak loads and seasons.

1495 Exhibit 6. This exhibit shows the monthly sheep, cattle and hog receipts at the Denver market for the years 1930 to 1934, inclusive, also the variation between the high and low months of each year, and the average variation for the five-year period. Sheet 1 shows the variation in sheep receipts. The average variation for the five-year period between the high and low month in this species is 485,964 head. It will be noted the maximum receipts come during the months of August, September and October, this being the time when it is necessary to get the lambs out of the mountain forest reserves. Producers have no choice except to market during these months. If they hold them longer on the forest reserves, they might become snowed in and there would be danger of extreme losses. They cannot ship them earlier because the lambs are not

Trans.

ready. We have endeavored by intense solicitation to build up our receipts during the light months, and, it will be noted, have been reasonably successful in doing so. The periods May, June and July, prior to recent years, have always been light sheep months for us. In 1930 the total receipts for this three-month period were 187,314 head. In 1934 total receipts for this same period were 747,332 head. We have been able to change these months from deficit into profit months for the company by this work. If our peak period only lasted for a week or two, we might be able to get along with less facilities, but when it lasts three months we must provide facilities to take care of the receipts or not render the patron the desired service.

Range conditions create peak loads.

I call attention to the fact that receipts during the months of May, June, July, August and September, 1934, were the largest for these months for
1496 the past five years. Our sheep receipts during the Fall arrived in a steady stream and it isn't a case of receiving exceptionally high receipts on one day and having two or three days to clean them up. As these lambs come off the range they are mixed fat and feeders and it is necessary to sort off the fat end, they being sold the first day and the feeder end usually the next day. This results in receipts piling up and a larger number being on hand than the daily receipts might indicate. During the week starting October 8, 1934, our receipts on successive days were as follows:

Monday	58,782
Tuesday	27,246
Wednesday	42,480
Thursday	21,830
Friday	41,218
Saturday	20,131

Page 2 shows the cattle receipts, the average variation between high and low months for the five-

Trans.

year period being 86,694 head. The same conditions are true with reference to cattle as with sheep, i.e., these cattle must be moved off forest reserves before winter sets in. We have no choice but to provide facilities for these cattle at the time producers must ship them or not render service. It will be noted the peak in cattle receipts comes at substantially the same time as the peak in sheep receipts, i.e. during the Fall months.

Page 3 shows the variation in hog receipts, the average variation for the five-year period between the high and low months being 53,249 head. The peak is usually in December, January and February.

1497 The number of head of livestock loaded in a car varies greatly, depending upon the weight of the animals, and it has been necessary to reach the average figure. I have a statement which is marked for identification Respondent's Exhibit 7, showing the actual loading of cattle, calves, hogs and sheep per railroad car received at the Denver market for the years 1933 and 1934. The calf average in 1934 was increased on account of the Government drought program. It will be noted sheep load approximately 7½ to 8 times the average head per car of cattle. Witness Christensen commented on the sheep division only occupying approximately one-fifth of the cattle division for about four times the receipts in number of head. The sheep division is double-decked—the cattle division is not. There is no similarity between the room needed to handle these two species. Our sheep receipts are largely single ownership per car, while cattle are mixed ownership. There are also many more sorting and selling classifications on cattle than sheep, which require more pens. We endeavor to furnish the

Average car loadings of livestock.

1498 facilities required by our patrons in both departments without reference to each other, and do not

Trans.

enlarge until necessary to render proper service. Our cattle receipts in 1934 totaled 765,000 head, or, on an eight to one basis, equal to about 6,000,000 sheep.

Resp. Exhibits 6 & 7 offered.

1499 Respondent's *Exhibits 6 and 7 offered* in evidence. The Government reserved the right to object per *stipulation.*

Stockyard business not monopolistic.

Yes, I have read the testimony of the Government witnesses concerning the competition between this market and other markets and the impression has been given that there are some monopolistic features in the stockyards business similar to what is usually in public utilities of the gas and electric type. Any such impression is far from the facts. The livestock shippers in the territory tributary to the Denver market have many different markets they can ship to, as well as numerous local outlets, and are in no way compelled to market their livestock in Denver.

Competitive nature of business.

On the contrary it is a continual effort for those on the market to keep the traffic coming to Denver and, even with these efforts, they have not always been successful. In my following testimony I do not wish to leave the impression that the Denver market is obsolete and going on the rocks, but simply wish to show that

1500 the business is highly competitive and that the solicitors of other markets invade what might be termed Denver territory, that the producer has the right and opportunity to market with equal facility at any one of several markets or in any one of several ways, and that for these reasons the Denver market cannot have widely divergent rules or rates compared to other markets or other methods of selling.

Rates must be substantially uniform.

For these reasons our rates must be substantially the same as those at other competing markets, irrespective of whether or not such rates give a reasonable return. Competitive conditions govern and we have no monopoly.

Trans.

The Denver Union Stock Yard Company has at this time three traveling representatives, who put in all of their time on the road. The territory we work for cattle is Colorado, southern Wyoming, northern New Mexico, and to some extent, western Nebraska. The hog territory includes Colorado, western Nebraska and Kansas. The sheep territory includes Colorado, southern Wyoming, northern New Mexico, Arizona, California, Utah, Idaho, Oregon and parts of Washington and Montana. All of this territory is worked by our men at different times of the year. In addition to this, we carry annual and seasonal advertising in magazines and bulletins such as the Producer, The National Wool Grower, The California Wool Grower, The Idaho Wool Grower, and others. We also send out circulars, daily sales sheets, The Denver Daily Record Stockman and other matter of an advertising and promotional nature. We will hereafter describe the various forms of marketing that exist for producers in our territory for cattle, sheep and hogs, and the competition they give to the Denver market. At the outset we point out that solicitors from other markets are at all times active in all of this territory attempting to secure shipments for their markets. The competition from other markets is very definite and very real.

As to the specific competition which the Denver market encounters in each species:

Competitive nature of business.

1501 Denver receives 90% of its cattle receipts from the States of Colorado, Wyoming, Texas and New Mexico. On a five-year average, ending with 1933, 68 per cent of its receipts came from Colorado. Colorado receipts at Denver are divided about 65 per cent from range territory and 35 per cent from feed lots and small farm cattle.

In the case of range cattle, many avenues of sale

Trans.

are open to the owner. He may market at Denver or he may ship to any one of the Missouri River markets or Chicago. Railroad service is excellent to any of these other markets. Livestock may now move from Rifle, Colorado, a representative western slope shipping point on the D. & R. G. W. Railroad to Omaha without feeding en route. Improved railroad service and the opening of the Dotsero Cut-off has brought the majority of these loading stations at least 36 hours nearer the northern Mis-
1502 souri River markets. Cattle from the North Park section of Colorado, which must move through Laramie, Wyoming, to reach Denver, may move to any Missouri River market without feeding en route. Receipts of Colorado cattle at the four river markets in 1933 totaled 74,953 head, or 25 per cent of the Denver receipts. In 1934 they received 215,497 head, or 44 per cent of Denver. However, this included some Government cattle. We do not have Chicago's receipts, and, therefore, cannot make a comparison with them.

California demand has been growing in our territory for cattle during recent years. California packers actively buy and California markets actively solicit shipments in Colorado. In 1934 the movement of cattle from Colorado to California exceeded 100,000 head. A large part of these formerly came to the Denver market. Part of this movement in 1934 was caused by the excellent range conditions in California, and part were Government cattle, however, the movement has been growing steadily for several years and will continue to be an increasing menace to cattle receipts at the Denver market.

Direct selling and buying.

1503 There is a growing tendency for producers to sell direct and for feeders to buy direct, this apparently being one of the trends of the times accelerated by the provision of the Interstate Commerce Commission that the 85% stocker and feeder rates

'rans.

will apply around central markets but not through them or if the shipments are sold on such markets. By this 85% rate I mean that the Interstate Commerce Commission has established what might be termed 100% rates on livestock from all points of origin to practically all destinations and has made a specific provision that 85% of this 100% rate will apply on stocker and feeder animals when not moved to or sold at markets where the other rate applies. For example, the rate from Rifle, Colorado, to any Missouri River point is 61c per hundred. To points adjacent to the Missouri River markets where the same rate might apply, the rate on stockers and feeders purchased at point of origin and moved to such adjacent points, would be 85% of 61c or 52c per hundred pounds, but the full 61c rate would apply if the stockers and feeders were moved to the markets. The same thing applies at

The 85% rate on stockers and feeders.

1504 Denver. We find a tendency to avoid the market on account of the 85% rate especially marked among the larger feeders. One large Nebraska and Wyoming feeder last fall purchased over 60 carloads of cattle at Gunnison, Colorado, moving direct to his feed lot. Had he not made this purchase, the cattle would undoubtedly have come to Denver. In another case, an operator on the Denver market received an order for 10,000 cattle from a corn belt feeder. He filled 25% of this order on the Denver market and the other 75%, or 7,500 head, in the country in order to get the 85% rate.

Fat Cattle competition.

As to the competition on fat cattle from the feed lots and cattle from small farms, much the same competitive conditions exist. Fat cattle from northern Colorado may move readily at express train speed to the Missouri River markets or Chicago. Greeley, Colorado, is in the heart of the northern Colorado beet feeding section, 55 miles north of Denver. A fattener, or as he is generally called,

Trans.

a feeder, loads his cattle for either Denver or Omaha in the evening. If coming to Denver, he arrives there about midnight, while if going to Omaha, he will be at that point, 500 miles away,
1505 by 7 o'clock the next morning, in plenty of time for the same day's market on which he might sell in Denver. If he desires to go to Chicago, he can reach that point without feeding en route. Just a few years back, one feed was required to reach a Missouri River market and two to reach Chicago. Any geographical advantage we may have enjoyed at that time has been destroyed.

Auction Sale Competition.

County auction sales also affect the situation decidedly. Auction sales have sprung up all over this territory, as well as in eastern Colorado and western Nebraska and Kansas. Greeley, Colorado, has four different auction sales, or almost one for every day of the week. I recently attended some of these auctions, as well as auctions in other localities, and found cattle selling up to $90.00 per head and, because auction sales at such points are not regulated by the Secretary, paying selling fees three and four times the entire cost of selling at Denver. There are two auction sales at Sterling, Colorado, 100 miles northeast of Denver, and others at Holyoke, Colorado, Brush, Colorado, Yuma, Colorado, Wray, Colorado, Benkelman, Nebraska, Imperial, Nebraska, McCook, Nebraska, St. Francis, Kansas, Goodland, Kansas, in addition to many others in Denver's territory. New auction sales are springing up weekly in all of Denver's feed lot and plains territory.

Direct Buying.

1508 The competitive nature of the business is further augmented by direct buying. As stated previously, California has been in our territory for both fat and feeder cattle in recent years. This Spring interior Iowa packers were in Denver territory purchasing

Trans.
direct. On one trip, a buyer from Morrell of Ottumwa purchased 2,000 cattle out of feed lots within 40 miles of Denver, and has made additional trips into Denver territory since then. We have found no way to combat this, for such sales would be made if there was no marketing or feed charge at Denver, but it illustrates that we have no monopoly. The conditions of which I have been speaking are more or less general in all of the States which supply the Denver market with cattle. The majority of Wyoming's shipments to Denver come from southern Wyoming, and those from New Mexico come from northern New Mexico. Conditions in both of these sections are comparable to Colorado. Texas is more removed from Denver and has additional outlets through Fort Worth and Oklahoma City. These trends, we believe, are the cause of the decrease in Denver's cattle receipts over the past five years in the face of an increased supply. Colorado's shipments to the Denver market have decreased from 438,000 head in 1929 to 299,000 in 1933, a decrease at Denver of 139,000 head or 32% in the face of an increased supply.

1509 In the case of sheep, the same central markets are open to producers as in the case of cattle. Northern Colorado is one of the larger lamb feeding districts of the nation. Lambs from this section can load and make any Missouri River market or Chicago without feeding en route. There is no geographical or railroad condition which forces the business to the Denver market. In 1933 the River markets received 640,296 Colorado sheep or 50% as many as Denver, and 1934, 767,577 Colorado sheep, or 55% as many as Denver.

Sheep Market Competition.

The same is true with Idaho and California lambs moving through Laramie, Wyoming. These lambs must move 110 miles out of line to reach Denver. The majority of them feed at Laramie. They can

Trans.

reach any River market from Laramie without feeding en route.

Direct buying of feeder lambs has been practiced to some extent for many years in this territory. This usually increases as the supply of feeder lambs decreases, and we are faced with a decrease the coming few years, principally due to curtailment of range by the Taylor bill plus the fact that the industry has been over-expanded in the past. Direct buying of fat lambs in Denver sheep territory has not been practiced except in the case of California within the past two years. Last year the large packers started purchasing fat lambs in Idaho and western Colorado. In Idaho in 1934 Swift & Company took 175 cars from one shipper who had previously been marketing at Denver. Swift, Armour and Cudahy bought large numbers of lambs
1510 on the Moffat Line and the D. & R. G. W. in western Colorado last fall. Just where this will end we do not know. We do know that there is a trend in that direction and that producers marketing at Denver have many avenues of sale open to them. The Denver market by no means has a monopoly on this traffic.

Hog Market competitive.

With hogs, about the only business the Denver market now receives which sells on the market is the trucked-in shipments. California buyers have invaded every part of our territory and, regardless of prices paid at Denver, pay an amount sufficiently higher to make the purchases. Practically every town has a buyer representing California. Practically every town has an auction sale where hogs are sold. Denver packers meet this competition by also buying direct; however, this condition does not give the market any assurance that a good volume of hogs which will pay yardage will be received from this source. If prices get too high, it results in a movement of dressed product into Den-

'rans.

ver territory. For example, Denver packers, in attempting to attract a supply of hogs to Denver, got the Denver price 70c over Chicago. They attempted to pass this cost on to the consumer. Interior Iowa packers noticed the prevailing prices of hog products at Denver and immediately shipped in several cars of dressed product, underselling the market. Denver packers could not, of course, continue to take this loss and had to get their prices back in line with corn belt prices.

1511 A resume of our evidence along this line is that the Denver market in no way had a monopoly on the livestock produced in its territory; that producers have many outlets open to them and use all of these outlets; that in order to maintain our supply we must keep our market in line and facilities adequate; that other sections of the country having a deficit of livestock are gradually encroaching on our territory; that selling costs at Denver in no way bar this traffic from coming to Denver, but on the other hand, producers patronize other marketing agencies which are much more expensive, are not regulated, and are not as efficient.

1512 In my opinion the prospects are that the average supply of livestock coming to the Denver market will be greatly reduced. I cannot say how long this condition will continue, no one can, but I am certain that for the next two to three years the supply will be much below normal and hence the five-year average will necessarily be low. I base my opinion on my own knowledge and observation of conditions in the territory tributary to the Denver market, and also on the published forecasts of the U. S. Department of Agriculture. The year 1934 witnessed the most severe drought in the history of the West. It covered all states west of the Missouri River to the Pacific Coast Range of States, where its effect was not as acute. In order to accord re-

Trans.

lief to range men and particularly to the cattle and sheep owned by them, the Government entered into a relief program, which finally resulted in the purchase by the Government of over 8,000,000 cattle and 3,500,000 ewes. The result of this program is that the cattle population, and especially that of female or producing cattle, in the States west of the Missouri River and tributary to the Denver market, is much less than it was on January 1, 1934, or for several years prior to that date.

1513 A paper was marked Respondent's Exhibit 8 and witness asked to identify it.

Resp. Exhibit 8 offered.

Respondent's Exhibit 8 is a statement of Government purchases of sheep and goats issued by Harry Petrie of the AAA, and includes all Government purchases up to February 16, 1935. It is a cumulative report as it is headed, and as indicated in the lower left hand corner "Program Concluded" is the final report of the Department except for such corrections as might be made later.

A similar exhibit shows the same information with reference to cattle and was issued by the same
1514 Department showing all cattle purchased up to April 8, 1935. The Government program was concluded prior to that date, and shows $111,531,383.00 total payments by the Government on account of drought cattle. The first column shows the number of producers who sold cattle to the Government, and totals 696,679 separate producers. The second column shows a total of 25,253,425 cattle owned by the above number of producers. The third column
1515 shows the total number of head sold by these producers to the Government, namely, 8,290,741 head of cattle, and the fourth column shows the number condemned on ranches and not shipped to any point for slaughter. This last totals 1,479,679 head. This figure is included in the figure of 8,290,741

Trans.

head total purchases. The States listed, namely twenty-four where cattle were purchased, and twenty where sheep were purchased, are practically all west of the Mississippi River. Of those States,
1516 Colorado, New Mexico, Wyoming and Texas originate the majority of Denver's cattle supply. California, Colorado, Idaho, New Mexico, Oregon, Texas, Utah and Wyoming originate the majority of Denver's sheep supply. We occasionally receive cattle from Utah, Arizona, Idaho and Nevada, but the past few years, due to the enlargement of demand in California, the movement of cattle from these States to Denver has been rather light.

1517 Respondent's Exhibits 8 and 9 offered in evidence subject to such objection as the Government may desire to make following cross-examination. **Resp. Exhibits 8 & 9 offered.**

Respondent's Exhibit 10 is a statement of the U. S. Department of Agriculture of the Agricultural Outlook for 1935, being labeled Miscellaneous Publication No. 215. Pages 51 to 70 cover thoroughly the outlook for cattle, sheep, hogs and horses. It is stated in the foreword that the conclusions are conservative and are based on the best information obtainable from all sources. We will briefly quote from various pages to indicate just what the Government itself thinks the prospective supply will be for the next two years. The pamphlet was issued in November, 1934. None has been issued since which contradicts it.

Witness then quoted from pages 58, 59, and 60 of said Report, concerning cattle, wherein it is stated, among other things, that 80% of the cattle purchased by the Government and slaughtered were cows and heifers. Based upon this statement, and comparing the government census of January 1, 1935, of female producing cattle on Colorado farms with the five-year average, 1930-1934, the witness esti-

Trans.

mated the calf crop of 1935 and 1936 to be less than 276,000 head.

In normal years a State which is short of breeding cattle can go to adjoining States to secure its shortage. There is no State to which any of the western States tributary to Denver can go for an additional supply because such States are all short. The cattle that are gone on account of the drought are gone for several years. Rain in 1935 will not replace them.

1523 It is true that during the past two months we have had very good rainfall in our mountain districts and rainfall above normal in northern Colorado, in the area around Denver and in the part of the plains section east of Denver. The water level, that is the water level below the ground has been restored in some cases near the mountains but in eastern Colorado it is still much below normal. This recent moisture has considerably alleviated the situation. Grazing conditions are probably better at this time than they have been any time for the past three or four years. This will, of course, restore our herds much sooner than if the rainfall had not occurred. Naturally if the drought had continued as severe as it was a return to normal would have been impossible. This rainfall with continued precipitation in the future should result in the restoration of our cattle population—oh,—by the end of 1936 for example. However, rainfall does not immediately replace animals that have been lost on account of a drought by any means. It does not have in-
1524 stantaneous effect upon the calf crop; after the female cattle have been removed the calf crop has gone forever. The female calves must be held off the market for a couple of years to replace the cows which have been destroyed in order that normal production will again recur.

Trans.

During the period 1929 to 1933 there was a definite downward trend all of these years until, in 1933, receipts had decreased 139,000 from 1929. No consideration has been given to this factor although we know it is likely to continue in the future to some extent, it having been caused by direct buying, auction sales, application of 85% rates around the central markets, the west coast reaching into our territory, etc.

By the same method of calculation the trend of receipts from the remaining three States tributary to the Denver market as employed before, namely New Mexico, Texas and Wyoming, are as follows:

STATE	Average Cattle on hand Jan'y 1st, 5 years	60%	Government Purchase	Average Received at Denver 1929-1934	Prospective Receipts 1935-1935
Colorado	1,558,000	951,000	289,000	364,000	276,000
New Mexico	1,445,000	867,000	545,000	37,000	18,000
Texas	6,740,000	4,040,000	1,955,000	37,000	23,000
Wyoming	1,023,000	600,000	285,000	41,000	25,000
					342,000

The prospective receipts of 342,000 equal 93% of Denver's receipts. 100% equals 370,000 or only 48,000 under the actual of 418,000 received in 1933.

For the five years ending with 1933 Denver's cattle receipts totaled 2,563,732 head. Of these 350,476 or 13.7% were calves. 13.7% of the prospective receipts of 370,000 for 1935 and 1936 equals 50,700 head of calves. For this reason it may be estimated that Denver's cattle and calf receipts for the next two years will be as follows:

1527 319,000 adult cattle

50,700 calves

These statements of receipts and prospective receipts are not synonymous with cattle sold because the Denver market is a large feeding point for shipments en route to ranges, feed lots or other mar- 835

Trans.

kets, and because there are markets east of Denver at which producers often think they can do better and frequently forward their shipments unsold from Denver to those points, all shipments received at Denver are not sold. The marketing charge is not charged unless shipments are actually sold. The average sales of cattle and calves for the five years ending with 1933 were as follows:

Year	Cattle	Calves
1929	83%	90%
1930	86	83
1931	87	90
1932	90	79
1933	93	76

Because of the number of Government cattle forwarded unsold in 1934, on which yardage was not charged, the 1934 cattle percentage of sales was 77%. We have not used that figure because it would reduce the prospective sales for 1935 and 1936 and would not be a fair figure.

For rate making purposes, the estimated number of cattle and calves which will sell at Denver in 1935 and 1936 is as follows:

Adult cattle 87.8% of 319,300—280,345 head.
Calves 83.6% of 50,700— 42,385 head.

1528 The numbers on which yardage was actually received for the years 1929 to 1933 inclusive are as follows (this includes everything that paid the marketing charge, including resales through commission firms):

1528

Year	Cattle	Calves
1929	461,796	61,567
1930	433,275	72,989
1931	381,915	58,224
1932	329,090	46,802
1933	321,642	53,379

Trans.

I have eliminated 1934 because it is not representative on account of the receipts of Government cattle last year.

Our estimate of prospective sales for 1935 and
1529 1936 is only 41,000 cattle and 11,000 calves, or approximately 14% under those actually sold in 1933, and our estimate is conservative.

Witness then quoted from pages 61 to 66 of the Government report (Resp. Ex. 10) concerning sheep, indicating a sharp reduction in sheep marketings in 1935. Of the 3,606,000 ewes purchased by the government in 1934, 75% were from the Denver market territory. The witness then analyzed in detail prospective sheep receipts from Colorado, California, Idaho, New Mexico, Oregon, Utah, Wyoming, and Texas, giving in detail his method of computation and analysis. The testimony on this feature appears at pages 1530 to 1539 of the Transcript.

1539 It was stipulated by counsel that the detail of the figures comprising "Stockyards Company's net worth December 31," and referred to in the testimony of witness Dozier, at Transcript page 889, may be placed in the record after the adjournment of the hearing. Counsel for the Government objected on the ground that the information was immaterial, which objection was overruled.

1544 (Witness continuing). All sheep received in Denver are not sold. As is true with cattle, Denver is a large railroad feeding point for shipments en route to feed lots or ranges. Numerous lambs are also forwarded unsold by owners who feel they can do better at some market farther east. In either case no marketing charge is made. Following is 837
the percentage of sheep sales at Denver for the five

Trans.

years 1929 to 1933, inclusive:

1929	66%
1930	76%
1931	74%
1932	78%
1933	71%
AVERAGE	73%

Percentage of sales in 1934 was 76%, which was below 1932, equal to 1930 and, eliminating government ewes, about the same as the five-year average. Applying the 73% average sales to the estimated 1935-36 receipts, we have the following result:

73% of estimated receipts of 2,340,000 equals 1,708,200 on which the marketing charge would be collected. These estimated sales of 1,708,200 exceed any year up to 1931, and is, therefore, a liberal estimate.

The witness then quoted from page 53 of Resp. Ex. 10 wherein it is stated that 1934-1935 marketing of hogs would probably be the smallest in 20 years.

(Witness continuing). During the past few years there has been a definite change in the marketing and destination of hogs produced in Denver territory. For many years and up to about 1925, practically all the hogs produced in this territory came to Denver or moved east. When they came to Denver they were sold. Prior to 1925 there was practically no west coast demand for hogs in Denver territory. For the period 1913 to 1922, inclusive, 98 to 100 per cent of the hogs coming to the Denver market sold and paid the marketing charge. From 1923 to 1925, inclusive, the sale percentage was 95%. Since 1926 it has gradually been decreasing, this reflecting the use of the Denver market as a
838 feeding point for hogs en route to the west coast.

Trans.

The percentage of sales in 1930 was 89%; 1931, 77%; 1932, 75%, 1933, 70%, and 1934, 64%.

1933 and 1934 were the largest years Denver has ever had in hog *receipts,* as distinguished from hog sales. These years more accurately reflect the present and future normal condition than years prior thereto.

I estimate receipts and sales, that is to say, the number of receipts and sales upon which The Denver Union Stock Yard Company will collect yardage for the year 1935, is as follows:

		Receipts	Sales
1555	Cattle	319,000	280,345
	Calves	50,700	42,385
	Sheep	2,340,000	1,708,200
	Hogs	426,000	276,900

The Exhibit identified as respondent's Exhibit 11 takes our estimated receipts and sales for the years 1935 and 1936 and compares the revenues from such estimated sales at the prevailing rates with the actual results of the year 1933. It is assumed the same quantity of hay per car *or* head will be fed during the year 1935 as was actually fed in 1933. The same margin of profit on hay is used for the year 1935, that is, 61.7 cents per cwt. on hay put on the fence, and 71.4 cents per cwt. on hay fed out, as was actually the margin in 1933, although our actual margin of profit at this time is somewhat below that estimated. Loading and unloading, weighing and miscellaneous yard revenues were reduced in the same ratio as the estimated decrease in receipts. Other income, such as the Exchange Building, was assumed to be the same. Operating expenses which are more or less controllable, such as labor and repairs, were reduced in the same ratio as the estimated decrease, although we know from experience that when business drops off we can-

Trans.

not reduce our labor costs in the same proportion.
1556 When we are able to lay off men and still accord good service, it is always the lower rather than the higher priced men that are laid off. We have assumed local taxes, depreciation, administrative expense and other such expenses to remain normal. This exhibit shows prospective earnings of our company to be $189,430.71 for the year 1935. The addition of reweigh charges totaling $10,000 would bring this up to approximately $200,000. This addition of $10,000 will be explained later.

Trader yardage.

When I refer to reweigh charges I mean the apparent tendency on the part of the Department to insist upon some sort of a reweigh charge. I do not mean in any way that it could be collected or that it would be appropriate at the Denver market, or proper, or that any such reweigh charge is now made at the Denver market. If the term "reweigh charge" were changed to "half yardage charge on traders" my testimony would be exactly the same. I have the earnings of The Denver Union Stock Yard for the first five months of 1934 compared to the same period in 1935, both being figured the same way and with the same overhead deductions. The earnings for the first five months of 1934 were $58,232.34. For the first five months of the year 1935 they were $26,529.63, a decrease in 1935 of
1557 $31,702.71, or 54 per cent. This earning figure is the net earnings, after the deduction of bond interest, which we deduct on a monthly basis, the deduction being the same each month of the year. Last year we deducted 1/12th per month of approximately $66,000, and this year we are deducting 1/12th of approximately $57,000. The difference in the amount of deduction is due to the fact that certain bonds were called in between 1934 and 1935. We
840 called in $250,000 in bonds effective January 1, 1935.

Trans.

(Continuing with respect to respondent's Exhibit 11).

On page 2 of Government Exhibit No. 7, witness Christensen states, among other things, that if the Government had not purchased the cattle they did in Colorado last year, a large number of them would normally have died. The Government purchased in Colorado last year 289,000 cattle. The Bureau of Agricultural Economics reports that in Colorado 25,000 adult cattle and 26,000 calves died in 1932, this being a normal death loss incident to cattle production. The total was 51,000 head. In 1933 these deaths were 30,000 adult cattle and 33,000 calves, a total of 63,000. In 1934 the death loss reported by this Bureau was 35,000 adult cattle and 36,000 calves, a total of 71,000. In other words, probably on account of the drought, the death loss
1558 in 1934 was materially higher than during normal periods. We have given no consideration to this in our figures. The Government purchases did not decrease this death loss, but, on the other hand, the death loss was higher for the same reason that the Government purchased cattle. The actual conditions are just opposite to the inference Mr. Christensen places on the Government buying.

Respondent's Exhibits 10 and 11 were thereupon offered in evidence. Ruling was reserved until after cross-examination.

Resp. Exhibits 10 & 11 offered.

(Witness continuing). I have heard the testimony in this case including the recommendation of Mr. Christensen that the so-called Show property be excluded as not being used and useful within the Government construction of the Packers and Stockyards Act, and as a matter of fact I have read Mr. Christensen's recommendation and heard his testimony from the stand with regard to it. The history of the Stock Show at Denver and the part

The Stock Show.

841

Trans.

it plays in the handling and marketing of livestock in commerce at The Denver Union Stock Yard is as follows:

Scrub cattle not good feeders.

Thirty-five years ago, or about 1900, the type of cattle produced in the territory tributary to the Denver market was mediocre in quality and breed-
1559 ing. They were the Southern Longhorn type, which had been driven north largely from Texas as the country developed. They were hard to fatten, were not a desirable meat when fattened, were not good units of meat and did not give a good account of themselves, in ratio to the time and feed consumed, either on the range or in the feed lots. At that time Colorado cattle were not known as being particularly good feeders and did not command a premium at Denver or other markets. This condition with regard to mediocre cattle was general in the territory tributary to Denver market at the time of which I have been speaking, namely 1900 and the
1560 early 1900's, and in my opinion resulted in penalizing the producer of those cattle as to price and outlet. As a result of this situation it was felt by the majority of the producers of the west and the owners of the Denver Stock Yard that much could be done to improve the type of cattle produced in Colorado and adjacent states, to advertise the better cattle that could be produced, to create a premium for them, and to enlarge the outlet on the Denver market. It was apparent that such action, with the expected success, would result in a major benefit to the livestock producers and a minor
1561 benefit to the Denver Stock Yard in the proportion with which the additional returns would be divided. I say that because it *costs no more to market a* high-quality animal than a poor or mediocre animal. The *marketing charge* is the same, while the producer receives a larger net return.

Cost of marketing scrub animal same as good animal

ans.

Producer demand caused Show.

The Stock Yard Company undertook this work primarily because of producer demand. Complying with this desire on the part of its patrons, in the year 1906 a Stock Show was started in Denver. The first show was held in tents and other temporary structures. It met with such success that steps were immediately taken for the Stock Yard Company to provide permanent buildings and take other action to see that the Show became an annual fixture and of national importance. This led to the building of the Stock Show Stadium in 1908 and other buildings to properly house the Show, which is now known as the National Western Livestock Show, which is admittedly the third largest and most important livestock show in the United States —and the largest show in some respects.

Denver Show third largest.

62 Outside of the Stadium and the Sales Arena the Stock Show is handled in connection with the horse and mule property, the buildings being used by the latter 51 weeks of the year and being vacated by the horse and mule people the one week of the year the Show is being held. By handling in this manner, we have been able to secure 100 per cent utilization of all buildings, except the Stadium and the Sales Arena. We also use a larger part of the main cattle division during Stock Show in the handling of Stock Show livestock. Approximately 200 pens in the south end of the yards are used for the handling of bulls. Fat cattle in the Show are yarded in the pens just north of the Exchange Building. Feeder cattle, usually over 100 carloads, entered in the Show, are yarded north of the fat cattle to about the 22 alley. During this week commission men are moved down to the north end of the yard and regular market arrivals are yarded there. The horse and mule division is moved out of its location on the hill into the lower deck of the sheep barn, where their sales are held Stock Show

Much of yard proper used for Show.

Increased receipts due to Show.

Trans.

week. Sheep receipts are light enough at this time for us to do this. In other words, the bulk of the stockyards property during Show week is devoted to purposes of the Stock Show and not merely tract or Zone 9. This development occurred before the
1563 adoption of the Packers and Stockyards Act, and it was undertaken by the Stock Yard Company for the purpose of benefiting the producer and the Denver market without any thought of its possible effect one way or the other on rate regulation.

Purposes of stock shows.

With respect to the purposes, the stock shows have what might be termed three distinct purposes. The first is to show producers the kind of livestock that can be produced by better breeding and higher quality animals; also, the results that may be obtained on the same amount of feed and time with such animals, compared with the kind formerly produced. Second, to exhibit and have on hand, for purchase if desired, these higher type breeding animals; and third, to advertise, create a premium upon and provide an outlet for these better type animals after they are produced.

Show has attained all three purposes.

The Denver Show, that is the National Western Livestock Show, has most decidedly achieved these purposes, in my opinion. There can be no question but that the National Western Livestock Show has assisted materially in improving the quality of the livestock in this territory, and I do not believe that any producer who has been in this territory raising livestock since 1900 would testify to the contrary. The Show has been a great educational medium for the benefit of both the producer and the fattener of livestock. It has shown the producer how to raise better livestock in less time and at less expense, and has given the fattener an article which he could more promptly and at less expense prepare for market. It has also been of material educa-

Trans.
1564 tional benefit to the fattener in showing him the result of better feeding. Today, Colorado and the adjoining states marketing at Denver produce the highest type feeding cattle and sheep in the nation. Compared to what producers would receive for scrub animals, these producers are receiving at least double the amount for the high type animals they are now producing, and are doing this at substantially the same production expense. The same is true with fatteners of cattle in the Denver territory. They have found that they can put gains on these high quality animals for a less amount of feed per pound gain than it took to fatten the mediocre local type. They have also found that because they have a more desirable product for the consumer, their outlet is immeasurably increased.

Denver largest bull market in U. S. during Show week.

As to the second purpose, namely: the supply of higher type breeding animals, the record of the Stock Show demonstrates its achievements in this regard. It is obviously an advantage to both the buyer and the seller, and to all other interested growers and fatteners, that there should be a good supply of pure bred bulls available at some adjacent
1565 point where they may be acquired at reasonable prices. The Denver Show now has the largest number of pure bred bulls offered for sale at any point in the entire nation, offerings having exceeded 200 carloads at a single show. Distributions of these animals have been to all of the range states. Because of this concentrated supply, volume movement and reasonable buying and transportation expense at the Denver Show, it has been possible for growers to obtain the best bulls obtainable anywhere.

The third purpose has likewise been accomplished by the Show, and definitely to the benefit of the producer and of this market. As is true with all products, livestock is manufactured by the producers of the west for sale. For this reason, feeder

livestock should be advertised among prospective buyers, the same as any other commodity, if the highest possible price, market conditions considered, is going to be realized. Many industries plan on spending 10% to 20% of the gross cost for advertising and merchandising and in other ways to call the attention of the consumer to the quality and attractiveness of the product. Probably because of scattered production and a consequent lack of co-operation among all concerned, high quality livestock has never been advertised to any extent except by stock shows or stockyard companies. The result of this advertisement, coupled with the improvement of the herds, has been to provide an outlet at Denver at all times of the year for the high-type feeders of the west after they were produced, and to create a willingness on the part of corn belt and other feeders to pay the higher price for them to which such animals are entitled. Denver is now the point where the largest feeder auction of the
1566 nation is held every Stock Show, this sale having sold as many as 600 carloads, or approximately 20,000 head, of feeder cattle at one auction. These cattle are distributed from Colorado to New York State, from Minnesota to Tennessee, and to practically every state in the corn belt where other feeders see them and learn where they can secure a like kind of feeding cattle at any time of the year.

Shows advertise product.

Show creates buying outlet.

Producers derive benefit though not attending.

Even though the producer does not exhibit at the Show, he most emphatically derives benefit therefrom, in my opinion. It has increased the year-round outlet for his herd. He derives a material benefit during the other 51 weeks of the year when he might sell at Denver, or if he does not sell at Denver at all. The advertising of Western feeder cattle by the Show has created an outlet for such cattle at all times of the year and has led to the large volume of sales of such cattle at the

Trans.

Denver market during the fall. It has also created an outlet for these producers both at home and at other markets where generally Colorado cattle, improved on account of the Show and thereby advertised, justify a premium. It also would appear that the producer who exhibits at the Show does receive some direct financial benefit by way of increased prices. Based on many years' experience and comparison of prices obtained during Stock Show week in January with current market prices during the month of December preceding the Show, it is our opinion that Stock Show prices for like
1567 quality feeding cattle will average from \$1.00 to \$1.50 per hundred higher than during December. Due to a lighter supply, December prices are usually higher than October and November prices. Feeder cattle during Stock Show week will average from 600 to 650 pounds per head. In order to be most conservative, we are using an average weight of 600 pounds per head, and an average higher price during Stock Show than during December of \$1.00 per hundred. This figures \$6.00 per head additional to producers selling at Denver during Stock Show.

Increased prices at Show.

I have prepared an exhibit showing the actual cattle receipts during certain periods of the month of January, including the Stock Show period. That exhibit is marked by the Examiner Respondent's Exhibit No. 12. This exhibit shows the actual cattle receipts at Denver for the first week of January, the last week of January, and for Stock Show week for the past six years. The average number of head received during the first and last week was 6,600 head, and during Stock Show week 20,712 head, the average heavier arrivals during Stock Show week being 14,112 head. The average larger return to patrons on the market, selling during Stock Show, was \$84,672.00 per year. This is in

Resp. Exhibit 12 showing January receipts.

Trans.

addition to other profits received by patrons during the entire years as previously enumerated.

January earnings in large part directly due to Show.

1568 The Stock Yard Company also receives some income directly traceable to the Show, in my opinion. It has received and continues to receive material benefits because of the Stock Show. We can definitely allocate the additional earnings to the company during the month of January to the Show. Ordinarily January would be the lightest month of the year at the Denver Yards if it were not for the Stock Show. January is after the range marketing is over and before cattle and sheep in feed lots are ready for market. The fall range marketing usually extends up into December, at least until the middle of the month. The marketing of feed lot cattle and sheep starts about the first of February.

Resp. Exhibit 13 showing Dec., Jan. and Feb. earnings.

I have also prepared an exhibit comparing the earnings of December, January and February at the Denver Yards, which is now marked Respondent's Exhibit 13. Respondent's Exhibit 13 compares the average earnings for the past six years of December preceding the Show, and February after the Show, with the month of January during which the Show is held. These are the net earnings with general overheads, taxes, bond interest, labor costs and other expenses deducted. It will be noted that the average earning of January over the average of December and February is $11,592.14 per year, or the carrying cost of 7% on $166,000.00. Obviously, if the investment in the Stadium is thrown out, the revenue of the Stock Yard Company caused by the Stock Show also should be thrown out.

Excess revenue due to Show.

1570 We also know that the Stock Show has resulted in additional earnings throughout each entire year. Respondent's Exhibit No. 5 shows the percentage of livestock sold at Denver for the period 1913 to

Trans.

1934, inclusive. This exhibit shows that cattle receipts in 1913 totaled 448,758 head, of which 229,061 head, or 51 percent, were sold. In 1931 receipts were almost identical, 439,562 head being received, of which 381,915 head, or 87 per cent, were sold. As the Secretary knows, it is only when an animal is sold that any marketing charge is collected by the Stock Yard Company, and this increase in percentage of sales, therefore, has meant an increase in earnings to the Stock Yard Company on 150,000 head of cattle, which at 35 cents per head, is $50,000 annually. It, of course, cannot be shown definitely and directly by numbers of head how much of this increase is directly traceable to the Stock Show, but we verily believe that the great bulk of it is so traceable because had it not been for the Show, the market would not have developed this outlet. There can, of course, be no doubt as to the definite increase in the month of January.

While it is true that livestock is held out and prepared for the Show, it cannot be asserted that this revenue would come to the Stock Yard Company at other times of the year if the Stock Show did not exist, because that is not true. The lower
1571 part of this Exhibit 13 shows the revenue to the Yard Company on pure bulls sold during the Show. These animals are usually in the yards for a week or ten days consuming feed the entire period. January earnings also include feed and bedding used by animals on exhibition. The feeder cattle would not necessarily come to Denver at other times of the year if the Denver Show was not operated. These cattle would normally be marketed during the fall, possibly at other shows such as Omaha, Kansas City or Chicago. During the fall, Denver receives about all the cattle it can handle with a steady outlet, and it is extremely doubtful if producers would market these additional cattle at Den- 849

Cattle marketed at Denver during Show would not come at other times.

Trans.

ver during the normal marketing season. We have found the inclination is to supply Denver with the amount producers feel can be readily disposed of, shipping the remainder to more distant points. This undoubtedly is what would happen with these cattle if there were no Stock Show at Denver. Shipments are also received in good numbers from states which, during the remainder of the year, do not market at all or in the same numbers at Denver as they do during Show week. The Denver Show results in cattle being held out from normal marketing and prepared specifically for sale at Denver. Lack of the Show would result in the same cattle being sent to other points for sale during the normal fall marketing season, when Denver is well supplied. It serves an additional purpose in reducing offerings at Denver and other points when movement is heavy and supplying some cattle for purchase when the movement is light. If there were no Stock Show at Denver, there would not be the same incentive to build and mature this livestock to show the
1572 advantages to be derived from expert handling, with the result that the general improvement of the quality of livestock would have been retarded.

Yes, the Stock Yard Company does derive some return from the Stadium and other Show buildings. In 1934 we received $5,475 return, but nothing during the preceding four years. We have also already received $5,000 rent for the 1935 Show. The Company endeavors to gain such income. An effort is made where possible to collect rent on the show buildings if and when earned. During the early years of the Show this was not possible. Since 1920 it has been possible the majority of the time.

If income is recognized, Show carries itself except for taxes, depreciation and upkeep.

I have prepared an exhibit showing the rents and income received from the Stadium and hook-up shed and strictly Show business. It is now marked

Trans.

Respondent's Exhibit 14. Respondent's Exhibit 14 shows the collections for the past ten years, the total amount from this source being $35,475, or an average of $3,547.50 annually. At seven per cent, this is the carrying cost on an investment of $50,-000. This revenue, plus that of $11,592 previously shown, at seven per cent is the carrying cost on an investment of $216,000, or the investment we
573 have in the Stadium and the land it occupies. In other words, for the taxes, upkeep and depreciation of the stadium, we and the patrons of the market receive the many material benefits the Show has made possible. The investment in Stock Show facilities and the expenses of the Show have been handled in two ways. Investment in buildings are concrete and so remain. They are, therefore, capitalized because they are part of the equipment for the successful operation of the Denver market just as much as any other part of the yard. Obviously, pens, scales and other facilities in the stockyards proper would be of no use unless a demand existed in Denver which would furnish an outlet for the livestock that might come. The Stock Show helps create a ready sale at a good price at all times of the year, and the pens in the stockyards proper are necessary for the handling of this livestock; however, pens in and of themselves do not create outlet or demand. As a matter of fact, the majority of the pens at the Denver yards were constructed after the Stock Show had been developed and other demand had been created. At the time the buildings of the Stock Show were constructed, the cattle and sheep facilities at Denver did not exceed one-fifth of its present capacity. These were constructed as the need for them appeared, after it had been demonstrated that the development policy of the Denver yards was proper and was securing results. It is as reasonable to capitalize and have in our 851

Trans.

investment account the property that made the pens and other handling facilities necessary as to have the pens themselves.

1574 In line with good business practice, expenses incident to the Show have been charged off as an operating expense, the same as other running costs of solicitation, advertising, development and so forth. Because of the far-reaching and permanent benefits such Stock Show expenses have had to the Denver market, these expenses might well be capitalized and put in the investment account. The Directors have followed a safe and sane course, charging these expenses off to operation, and we are not asking that such expenses be included in our investment account, but are asking that they be included as an operating expense the same as other business-getting and maintaining expenses. Obviously, if this company sent representatives into the corn belt feeding territory to attract buyers to the Denver market and build up a demand at Denver, such expenses would be allowed. For the same reason, if we provide facilities at Denver which attract buyers to the point that it builds confidence in the market, enlarges outlet at all times of the year and contributes to the general prosperity of the patrons of the Denver market, such expenses should also be allowed.

Show facilities properly housed.

In my opinion the Show is properly housed and I know that such housing is necessary for a successful Show and I do not think that any of it could be eliminated without serious injury both to the Show and to the purchaser.

In my opinion the Stock Show is used in the
1575 handling in commerce of livestock. Without question it is used in connection with the other facilities of the Company in the feeding, marketing and handling of livestock in commerce.

A Stockyard facility and service.

Trans.

Show has fostered hog production.

Now with respect to hogs and sheep, they are not neglected by the Show and the same benefits to the producers of those species and to the market therefore apply as in the case of cattle. The Show carries departments for all classes of livestock, including these and horses. The Show has continually offered premiums for and contributed to the improvement in breeding and feeding ~~of~~ hogs and sheep in the same manner that it has to cattle. The Show has assisted in demonstrating the feasibility of hog production in the State of Colorado and that such production was profitable to producers in the plains area. In 1913 Denver received 63,229 Colorado hogs, this being practically all of the production there being at that time no California demand. In 1933, twenty years later, this had increased to 220,237 head, with a substantial amount of hogs moving from Colorado to California not via the Denver market. In 1924, before California demand had increased to its present volume, Denver received 386,978 Colorado hogs.

Show benefits all sheep producers.

1576 In the case of sheep, due to improved breeding and feeding, both intermountain territory fat range and feed lot lambs are recognized as being of the choicest quality and command premiums wherever they sell. On January 1st of each year Colorado feed lots contain substantially 25% of all of the lambs on feed in the United States. The Denver Stock Show in a measure assisted in this development. It has offered prizes to Colorado fed lambs and Colorado fed cattle for many years. It has had on exhibition western fattened cattle, hogs and sheep at every show so that visitors might see what others were accomplishing and go home and do likewise. The benefits of the show are spread among all producers and its cost should be likewise spread among all rates.

Trans.

Nature of Stock Show Association organization.

Obviously, the more direct interest in the show by the largest number of people, the greater success it will have. The Stock Show proper is operated by the Western Stock Show Association, which is an association of various persons interested in the livestock industry. This association has a Board of Directors consisting of 39 members which includes all phases of the industry. Additional Directors are provided from time to time as producers or others appear who are willing to work for the good of the industry. The directorship includes
1577 officers of the Stock Yard Company, of the packing plants, of Denver banks, railroads, producers of all kinds of livestock, and others. It has been found that by handling in this manner much greater interest can be created, more support is received from local people as well as others, and a large free ticket list is avoided. Obviously, when several business men, serving as Directors of the Show, call on a certain industry or certain people for support, they receive a much better hearing and more consideration than if someone from the Stock Yard Company did the calling and solicitation. Any additional support or revenue, of course, reduces the expense of the Show and, therefore, the expenditure of the Stock Yard Company for this purpose. By handling in this manner we have made the Show more efficient, we have created greater interest, we have accomplished better results and have reduced expenses as well as adding to income, all of which rebounds to the financial as well as the educational interest of the producer.

The Stock Yard Company, through its President and General Manager and Secretary and Treasurer, attends all meetings and generally supervises actions and expenditures. All money paid out must be approved by the Secretary and Treasurer of the
854 Stock Yard Company. The General Manager of

Trans.

the Show reports at frequent intervals to the President of the Stock Yard Company and takes no action of any consequence without consulting with him. The existence of the Stock Show Association is in no way a leasing out of facilities or delegation of authority that the Stock Yard Company may own
1578 or have. We have substantially the same authority over the Show that we would have under any circumstances, and, in addition, in handling it in this businesslike way, have a great deal of support and interest that might not otherwise exist.

The feeder auction.

During the Stock Show the large auction of feeder cattle is held in the main yard. It is held there because these feeder cattle are on exhibition adjacent to the point of this auction. The Government does not attempt to throw this facility or any part of it out. The auction of pure bred cattle is held in Zone 9 in the sales pavilion adjacent to where these pure bred cattle are exhibited. This pavilion the Government throws out, although admittedly these pure bred cattle are livestock being handled in commerce. Witness Christensen has stated that the amount of time a facility is used is not a controlling factor; that it is the actual use for which it is used that makes it used and useful. There is no difference between these sales except perhaps the volume handled. Cattle in commerce are handled at each. One, however, for the good of the livestock industry, is as important as the other. The feeder auction facility is rebuilt every year because we need the room it occupies at other times of the year. The sales pavilion is permanently constructed because we have room for it in the location it occupies.

Resp. Exhibits 12, 13 & 14 offered.

Respondent's Exhibit 12, 13 and 14 were thereupon offered in evidence and the ruling thereon deferred until after cross-examination.

Trans.

The marketing charge.

1579 It is only when livestock sells or takes advantage of the market that the so-called yardage or marketing charge is collected. When livestock stops off for feed, water or rest, or when livestock tries the market, no yardage or marketing charge is made or collected. The only exception to that is that to which I have already testified, namely packer directs. With that exception in mind and without hereinafter constantly and specifically adverting to it, it is true that livestock can occupy pens at the yards and pay nothing for the use thereof if the livestock does not sell. Use of the pens, is in a sense, paid for in the profit on hay. The longer livestock is in the pens, the more hay is consumed, and the profit from hay and grain covers the use of the pens very largely. This hay profit is distinguished from the yardage or marketing charge. The marketing charge is only assessed and collected when the livestock is sold or when it takes advantage of the market. It is purely a marketing charge.

Profit on hay pays other use of pens.

The development of a market.

1580 In the development of a central market, a great deal more than the bare investment in handling facilities is necessary. Anyone with sufficient capital could construct a stockyards at any point he saw fit. Making it a paying institution for the owners and its patrons is an entirely different matter. The Denver market is an outstanding example of the necessity of material investments over and above the cost of the land and facilities to make it a paying institution. The Denver stockyards and the Pueblo stockyards were established at substantially the same time, that is, between 1880 and 1890. Both were originally established in a small way as feeding yards for shipments moving by rail. Both had an equal chance to provide an attractive point for the sale of livestock and thereby develop. Both knew that for a feeding stockyards to develop into a central market it had

Trans.

to provide an attractive selling point with reliable outlet for the livestock which might be offered and at prices comparable to other markets, expense considered. Both knew this took buying demand on the market which was dependable and there every day. Pueblo, if anything, had the advantage over Denver because it was on the main line of an east and west railroad which handled a large amount of livestock to and through that point. The size of a city does not make a livestock market. Ogden, for example, is a much larger livestock market than Salt Lake City, although the latter is a much larger city. Dallas is larger than Fort Worth, New York larger than any other, yet neither Dallas or New York City have successful livestock markets.

1581 Compared to Pueblo, Denver was on a side track, being 120 miles north of the main line through Pueblo and 110 miles south of the main line through Cheyenne. Very little traffic came to Denver on a silver spoon by being forced to stop there for feeding en route to some other market. These additional mileages from the north and the south meant higher freight charges and greater shrink to Denver. For this reason, Denver had to be especially zealous in its building, in its willingness to make investments which would make it an attractive livestock market with a dependable and daily outlet. It had to meet the competition of the already established central markets at the Missouri River—Chicago and St. Louis. It had to overcome the extensive out-of-line hauls which still exist. It could not overcome these handicaps by sitting idly by and letting hoped-for increased traffic build the market, for there never would have been any increased traffic. The owners accordingly decided to build a livestock market at Denver and make whatever investment might be necessary to accom-

Trans.

plish that result, over and above the investment in the property itself.

In my opinion, the Government land witness gave no consideration to the value of the market in the fixing of his land value. It is obvious that he could not when the value of adjoining property is the basis. It cannot be contended that when an engineer places a reconstruction value on physical property, that he allows for the value of the market, for the reason that the facilities are built in answer to a demand for them and as they are needed. In the event the property was abandoned, the salvage value of such physical property would, of course, be small; however, such facilities are not built to be abandoned or salvaged, but in answer to a demand for them which has already been created and which the owners have reason to expect will be permanent. No business man would invest three million dollars in a stockyards expecting to use it only a few weeks. Neither would he make such an investment until a going market with an active demand and a permanent life had been created. The latter is actually more important than the former. It is usually after a dependable demand has been created that the demand for proper facilities becomes imperative. There has been and is today no indication that livestock production will cease in the west. The Denver yards were built to handle that production, not to be abandoned and salvaged.

Privilege of the market defined.

1583 In paying the marketing or so-called yardage charge at Denver in the past, the patron of the Denver market has been paying for the privilege of the market, which includes much besides the actual use of the facilities and the labor incident to their use. The privilege of the market includes competition on the market; a ready outlet to buyers furnishing a reliable and steady demand; dealers

Trans.

in the market for various kinds of livestock; advertisement of the market among buyers all over the country *and a knowledge on their part that* a dependable supply of livestock exists for them, and all the other factors which go to make a market place for livestock. This is not going value in the sense it is usually used, but is a true outlay of capital to make all of these things possible. We contend that the going value of the Denver market is something over and above these expenditures.

I have prepared, or there has been prepared under my supervision, an exhibit or statement showing the actual cash expenditures for the development costs of the Denver market, which exhibit has been marked as Respondent's Exhibit 15. This exhibit is a statement of the expenditures made by the Stock Yard Company since 1891 for this distinct purpose, that is, to create a value of the market for which the patron has willingly paid in the past and which, it is our experience, he is glad to pay for, because a better market has been created for him by these expenditures. **Costs of developing market.**

1584 MR. MILES: Will you pardon me, please, and permit now an objection to this entire line of testimony on the ground that it is immaterial. This is specific rather than general.

THE EXAMINER: Objection overruled.

(Witness continuing). It is the difference, for example, of a patron selling, if he could, at Pueblo where nothing has been done to create a market, where no outlet and no competition exists, where there is no reliable daily demand for his livestock, and selling at Denver where all of these things do exist. Practically no livestock is sold at Pueblo, Colorado, or Laramie, Wyoming, a feeding point, although large amounts are received there under the

Trans.

36-hour law. It is the difference between a point which has established a market for which the patron is willing to pay, and a point which has similar physical facilities but no market. In the latter case, although the point has facilities comparable to Denver, there is nothing to pay for in a marketing charge because there is no market.

The Pitkin tract.

The Denver Union Stock Yard Company was incorporated in its present location in the year 1886. On July 26, 1888, The Denver Union Stock Yard Company purchased from Robert Knox Pitkin 11.43 acres of land for $52,500.00, this being land located between the Burlington right-of way, the old Platte River and the C. & S. right-of-way, partly embraced in Zones 6 and 7 in the present case. This land carried some minor improvements, consisting of an old shed and some cattle pens which were in after years torn down. The value of these was nominal and the land was not purchased for the improvements but rather for expansion pur-
1585 poses. $2,500.00 has been allowed for the value of the improvements, leaving $50,000.00 as the value of the 11.43 acres of land, or an average value of $4,375.00 per acre. Other land near the Stock Yard has been given the same value in arriving at the development cost, even though that land undoubtedly carried a higher value. The same price of $4,375.00 per acre has been allowed for land at the northerly end of the yard, although such land was nearer the seat of operations and the point of largest industry than the so-called Pitkin tract. Other prices used have been the actual cost of the land when we were able to ascertain it. When I say that $4,375.00 per acre has been allowed for the land at the northerly end of the yard, I mean merely in making up my tabulation or computation,
860 Respondent's Exhibit 15, and without regard to the

Trans.

question of actual present day value from a reproduction standpoint.

Prior to 1886 there were one or two small packing plants along the river in the present stockyards district. Hoeffer Bros. owned a slaughtering place about on the site of the present Swift plant, this being taken over by a firm known as Burkhardt and Mills about 1881 and operated as the B & M Plant Later Henry Gebhard became interested in this plant. On January 24, 1891, contract was entered into between Henry Gebhard, operating as the Colorado Packing Co., and The Denver Union Stock Yard Co., whereby, in consideration of the

Grant to Colorado Packing Co.

1586 Colorado Packing Co. erecting a packing plant of certain specifications on the present site of Armour & Co. and that it would receive at, purchase and pay or cause to be paid, yardage to the Stock Yard Company on all of the livestock it slaughtered, the Stock Yard Company agreed to grant the Colorado Packing Company 11.158 acres of ground and to purchase the machinery and equipment belonging to that company then in the B & M Plant for the sum of $25,000, which in reality was a grant to assist in the building of the proposed plant. Item 1 on Exhibit 15 shows the grant to the Colorado Packing Company of 11.158 acres. The value used in column 1 is that of the cost of the Pitkin tract of $4,375.00 per acre, which is fair and reasonable for the reason that the 11 acres granted to the Colorado Packing Company were nearer the center of industry in the stockyards than the Pitkin tract. At that time the Exchange Building of the Denver yards, a small frame building, was about in its present location, with the yards and their scale facilities north thereof. For this reason the actual value of the land was greater than the Pitkin tract, in our opinion. The agreement with the Colorado 861
Packing Company provided the deed would be

Trans.

placed in escrow until the sum of $100,000 had been expended on the packing plant, and carried a 20-year reversion clause; however, we have only computed simple interest at 6% carrying costs up to the date of the contract, January 24, 1891. Column 2 carries the land at $4,375 per acre, plus carrying costs, or an actual value of $5,028.33 per acre, and a total value of $56,106.11.

Item 2 covers expenditures for machinery and equipment of $25,000, this amount being paid to the Colorado Packing Company and being, in ef-
1587 fect, a grant to that company to assist in building their proposed packing plant. This packing plant continued to develop from the time that it was built, furnishing a dependable and daily outlet for livestock received at the Denver market. Today, enlarged, expanded and improved, it is the property of Armour & Company, and it, together with the Western plant, later described, is the reason Swift and Armour are located at Denver. The present value of the Armour plant is around $5,000,000: The expenditure of approximately $75,000 on the part of the Stock Yard Company and the dependable outlet it creates to the patrons of the Denver market have resulted in this size plant being located in Denver.

Grant to Becker & Degen.

Item 3 of this exhibit covers a grant to Becker and Degen under contract dated February 16, 1898. This firm was a large dealer in livestock at Missouri River markets. Under the contract and in consideration of the stock in the company granted them, they agreed to come to Denver, maintain offices, purchase cattle on the market and otherwise contribute to the buying demand on the market in a reliable and dependable way. It was known that if some substantial firm could be attracted to the market, it would only be a matter of time un-

Trans.

til others would follow, and this has been the history of this company.

From 1891 to 1902 the B & M Plant, containing machinery received in the grant of the Colorado Packing Company, was operated under lease, and in other ways contributed to the general welfare of the Denver market. It, however, did not grow and was not the factor on the market the Stock
1588 Yard Company desired. The Company sought to interest others in the building of a packing plant at Denver, and, after a time, was able to prevail upon various Denver people to agree to establish a packing company known as the Western Packing Company. Items 4 and 5 cover expenditure incident to the establishment and building of the plant of this company, which is the present plant of Swift & Company. The contract between the Western Packing Company and The Denver Union Stock Yard Company provided that in consideration of the Western Packing Company building and equipping a packing plant to cost not less than $250,000, and with the further agreement that they would agree to conduct a slaughter and packing house business for not less than 10 years, and to purchase and handle all livestock slaughtered through the yards of The Denver Union Stock Yard Company, the latter company would grant them 7.252 acres of land, $100,000 in cash, and the building, machinery and equipment of the so-called B & M Packing plant and the Hoeffer Slaughter House, which was owned at that time by The Denver Union Stock Yard Company, and which were on the site to be granted to the Western Packing Company. The machinery and equipment in these plants was that received from the Colorado Packing Company under the 1891 agreement. The records do not disclose how the ownership of the B & M Plant and the Hoeffer Slaughter House rested with the Stock

Grants to Western Packing Co.

Trans.

Yard Company, or what expenditure that company made in securing these plants, and, as we do not wish to include any items which are doubtful, nothing is being shown to cover the buildings them-
1589 selves. This land, the present site of Swift & Company, is also nearer the Exchange Building and center of industry than the Pitkin tract in Zone 6 and 7. However, we are only showing the value of the more distant Pitkin tract at actual cost.

Item 4 covers the land consisting of 7.262 acres, at $4,375 per acre, or an actual cost of $31,771.25. In column 2 the value of the land, including carrying costs, is $7,962.50 per acre, or a total cost of $57,823.68, the latter being the original cost, plus 6% simple interest. Item 5 covers the donation of $100,000 cash, being the same in each column. This contract provided that in the event the Western Packing Company did not live up to their agreement for a period of ten years, the plant and the land would revert to the Stock Yard Company, the deed being put in escrow for that period. At the end of ten years the Western Packing Company, having fulfilled their obligations in every way, and the Stock Yard Company having received the benefit of their demand toward the building up of the Denver market, title to the land and the other property went to the Western Packing Company. Inasmuch as this plant has developed, has brought the large packers to Denver, and has contributed substantially to the growth and building of the Denver market since its establishment in 1902, and will undoubtedly continue to do so in the future, it is apparent that the investment of the Stock Yard Company of $131,000 or $158,000 in this plant was an investment of good judgment.

Grant to Burkhardt.

Item 6 covers a land grant of 1.563 acres to Chas. Burkhardt, which later developed into the Coffin

Trans.

Packing Company and following that into the Blayney-Murphy Company and the Cudahy Pack-
1590 ing Company. The value of the grant in column 1 is $6,720.00, and in column 2, $12,556.40. The increase in value of column 2 over column 1 is due to the carrying cost computed in the same manner, namely 6% simple interest.

Item 7 is a cash grant of $4,000.00 to this firm made in consideration of their vacating the old B and M plant, which was granted to the Western Packing Company, and to assist in the building of their new plant in its proposed location. Inasmuch as this grant eventually led to the establishment of a large packing plant at Denver, and the taking over of that point by one of the National Packers, it obviously was a good investment.

1591 Item 8 was a grant to the C. B. & Q. Railroad of one-half acre in 1905, it consisting of a strip 17½ feet wide and 1,247 feet long in order to facilitate the loading and unloading of livestock and thereby make the market more attractive and more efficient for both buyers and sellers. **Grant to C. B. & Q. R. R.**

Item 9 was a grant of .46 acre of land to the Western Packing Company to provide room for expansion for the same reasons as outlined in Items 5 and 6. **Grant to Western Packing Co.**

Item 10 is a grant to the Coffin Packing Company of 1.78 acres to enlarge their property and help develop that company, it having expanded materially since the original grant made in 1903. **Coffin Packing grant.**

Item 11 was a grant of 1.431 acres to the Western Packing Company to increase and facilitate their slaughter and thereby increase their buying demand on the market. It was made for the same reasons as the original grant explained under Items 5 and 6. **Grant to Western Packing Co.**

Trans.

Grant to Coffin Packing Co.

Item 12 was an additional grant to the Coffin Packing Company in 1917 of .308 acre made on account of that company, in their expansion program of 1913, having built the easterly side of their plant upon the property of The Denver Union Stock Yard Company. A nominal price of $1,300 was received by the Stock Yard Company for this land, or at the rate of $4,300 per acre; therefore, nothing is shown in column 1. In column 2 the carrying cost price is used, less $1,300 realized in the grant.

Grant to U. P. R. R.

Item 13 is a grant made in 1918 of .362 acre to the Union Pacific to enable them to widen their curve and thereby handle livestock into and out
1592 of the stockyards more efficiently. The old curve was quite sharp at the point of this grant, resulting in engines being able to handle only a small number of cars, which delayed both in and out-bound shipments and increased our labor expense on account of waiting for settings of cars to load or unload.

Grant to C. B. & Q. R. R.

Item 14 is a grant to the Burlington Railroad of 2.05 acres, made necessary on account of our desire to close Franklin Street when we extended the yards across that street and to the north, it being necessary to give that company additional land in order to prevail upon them to move their tracks from Franklin Street. In this transaction it was also necessary to give the Burlington a free perpetual right to use one of our river tracks, value of which is not included in this statement, for the reason that we received an off-setting value on the land that they vacated along Franklin Street.

These investments are as much a part of the property of The Denver Union Stock Yard Company for its efficient and successful operation as the pens, scales, barns or other property, which, without demand on the market, would be of no value and would never have been built. It cannot proper-

Trans.

ly be contended that this development expense has been allowed for in the reproduction cost of the physical property because it was this development expense that caused the investment in the physical property. It will be noted the majority of this development expense occurred prior to 1916. Since that date the property of the Stock Yard Company has practically all been built or reconstructed.

Development expenses were prudent investments.

1593 Since 1916 both sheep barns and the New Exchange Building have been constructed. Since that date practically all of the cattle yard has been reconstructed and extended from Franklin Street north.

The success of the company shows that these development expenses were prudent and that both the company and its patrons are daily receiving the benefit of it. The major items in this statement are costs of developing packing plants which later led to the coming of Armour, Swift and Cudahy to Denver. No one can deny that these companies are valuable assets to the market and its patrons. No central market in the country has developed in a large way without some of these large packers being located there. When the present Cudahy plant was built, we expended $25,000 in the building of a viaduct to serve them, which is also used by ourselves. There is no question about the allowance of this viaduct in the rate base.

These investments are in no sense a capitalization of earning power, for the investment remains regardless of the earnings of The Denver Union Stock Yard Company. Our investment of substantially $150,000 in the Swift plant and $75,000 in the Armour plant remains regardless of what our earnings are. If the investments had not been successful, they might be criticised as being imprudent, but we have shown no investments which have not been material factors in the success of the company.

Trans.

Value of the market.

The proper definition of these investments or expenses is "Value of the Market." They were necessary in the building of the public market at Denver, the same as the general overheads in construction costs. They are tangible when one looks
1594 at the present Swift, Armour and Cudahy plants at Denver and has knowledge of the daily buying demand of these companies on the Denver market. In 1934 these companies bought a total of 1,967,841 head of livestock on the Denver market. Allowance of these items in the rate base in no way causes assumptions to be made, nor is it a matter of opinion or judgment. It does not require that a certain percentage allowance be made. It does not consider past deficits and attempt to capitalize them. There is no unsupported opinion, hypothetical calculations or conjecture, but it rests on actual experience and solid facts. We have shown the actual grant of 26.847 acres and the actual cost, which is $254,489.38. We have shown the actual costs plus carrying costs on land purchased for this purpose at the cost of the land plus six per cent simple interest, but have not added taxes and other carrying costs. The latter amount is $325,547.10. We believe this amount should be allowed in the rate base as the actual development cost because the land was purchased for this distinct purpose and was so used. We have not shown in this statement the carrying costs of land used in the expansion of the stockyards because we believe they should be carried by the patron of the yard who receives the benefit and charged off as an operating expense.

Development costs summarized.

Resp. Exhibit 15 offered.

Respondent's Exhibit 15 was thereupon offered in evidence and the ruling thereon deferred until after cross-examination.

Respondent's land all used and useful or necessary for expansion.

1597 (Witness continuing). Describing the land by using the Government zone numbers, we claim that

Trans.

all of the various zones are now used and useful in stockyards operation except Zone 5, a portion of Zone 6 and Zone 7, which latter tracts are useful and necessary *for expansion.* Portions of Zones 3 and 4 may have greater utilization in the future. The present use, in my opinion, clearly shows them used, useful and necessary in the handling of livestock in commerce at the Denver yards without any further utilization being necessary, and that if they were not owned by the stockyard company at this time, it would be necessary to purchase Zones 3 and 4.

I have a progress map showing the years when the various parts of the property were constructed or reconstructed which is now identified as Respondent's Exhibit 16. This Exhibit 16 was compiled from the records of the Stock Yard Company and under my immediate supervision. The year of acquisition is identified by the coloring of that portion of the land. The key to such coloring with **Progress Map, Resp. Ex. 16.**
1598 the pertinent year will be found on the map. In the upper right hand corner of the map all that portion within the red boundary line was acquired in 1916, not just that part of the land lying to the north of Race Court. For example, although there is no date opposite "Hay Barn No. 4," it is colored the same as a part of the manure dump. Both of those were constructed in 1917. The manure dump was entirely reconstructed and enlarged in 1934.

1599 Respondent's Exhibit 16 was thereupon offered and received in evidence. **Resp. Exhibit 16 admitted.**

(Witness continuing). The Denver Union Stock Yard has found it both to the advantage of itself and its patrons to have land available for expansion purposes when such land is needed. When additional facilities are necessary there are only two ways in which they can be provided. One is to **Expansion land**

Trans.

extend the yard out over other land, and the other is to go up in the air by double decking.

In the case of our sheep division, which is surrounded by the plant of Armour & Company, Swift & Company, the Platte River and the U. P. right-of-way through the yard, there was no alternative but to go up in the air, at a cost, based on present Government reproduction cost, of over $55,000 per acre, without a roof. For the 5.56 acres double decked in our sheep barn, the total reproduction cost is $567,719, or $100,000 per acre, this including a roof.

In the case of the cattle yard, double decking has not been necessary, and this has resulted in material savings to the patrons of the yard. For various
1600 reasons, double decking does not work as well for cattle as for sheep and, if it were necessary because of lack of land, would materially increase operating expenses.

In the years 1915 and 1916 the yards of The Denver Union Stock Yard Company became very congested in all departments. At that time the hog and sheep division was located immediately north of the present Exchange Building. The cattle division extended from this area north to Franklin Street. Exhibit 16, the progress map, shows the year of construction of various parts of our property. Franklin Street is that line running north and south just to the right of the center of the map and is so marked. In 1917 the hog and sheep division was moved to its present location, the area formerly occupied being changed to cattle pens. The cattle yard was extended from time to time as shown on the map. The original cattle yard is
870 that part shown in white in the center of the yard.

Trans.

Reasons for acquiring 30 ac. in 1916 of which Zone 3 is part.

In 1916 it became apparent that more area would
be necessary for cattle and for the handling of
manure. In order to avoid either the necessity of
double decking or of purchasing property subse-
quently at a higher price, with costly improvements
thereon which the company might then find it neces-
sary to wreck, the company availed itself of the
opportunity to purchase the 30 acres of land in the
upper right hand corner of the map from the River-
side Cemetery Association for $3,000 per acre. This
tract is outlined in red and includes all of the land
in Zone 3 and that part in Zone 2 north of the line
running from A to B. (See Resp. Ex. 16). The
management deemed this necessary for enlargement
1601 of the cattle yard, although the cattle pens were
not actually extended into this tract of land until
1928. It was necessary to obtain this 30 acres in
order to be able to close Franklin Street, which then
divided our property and was a distinct detriment,
and it was also necessary to have land for the build-
ing of a hay barn, for manure dumping, storage of
hay in stacks, the material yard and for other uses.
Had we not been able to close Franklin Street, it
would have been necessary to viaduct or subway
this street between the two parts of the cattle yard
which it divided. This would have been expensive
and would have materially increased our operating
expenses since 1917. The patron has been receiv-
ing the benefit of this more economical operation
caused by our purchase and the ownership of this
30 acres since that time. Had we not been able
to close Franklin Street and use that area for pens,
we would have been forced to construct pens further
1602 north into the 30-acre tract much sooner. It was
absolutely necessary to purchase this land at that
time. Had we waited or delayed its purchase, we
would have been bottled up. We had an option to
purchase this land for $3,000.00 per acre, and had

Trans.

had that option for some time. We learned that another option was subsequently given at $4,000.00 per acre, or for $1,000.00 per acre more than our option, on 10 acres immediately north of the line from A and B in the north end of Zone 2, where our cattle yard, hay barn and manure dump is now located. The seller was naturally anxious to have us lose the option and refused any extension. On the last day the Company exercised its option. Had we not exercised our option to this land in 1916, it would have been purchased by others, and a packing plant would have been erected on this site at a cost which would have made any subsequent purchase impossible. This, naturally, would have handicapped our operations, would have limited our possibilities of expansion, and would have left us no land for the hay barn, manure dump and other facilities on this tract. Lack of this 30 acres would have made it impossible for us to close Franklin Street unless we had paid for a highway viaduct over that street from point A to point C, a total of 1,600 feet, and at a cost of $135.00 per foot, or over $200,000.00 as computed by our engineer. The Omaha yards were forced to do this at a similarly great cost, which was allowed in its rate base, as shown by the order of the Secretary in that case. It would have been necessary to build such a viaduct to cross the Burlington main line,
1603 clearing its tracks 23 feet. The closing of Franklin Street was contingent upon the opening of Race Court.

No right of eminent domain.

The Stock Yard Company does not have the right of eminent domain. If it did, it would nevertheless be necessary to pay for buildings on property condemned.

Prudent investment.

It is readily apparent that the purchase of the entire 30 acres was a prudent investment and one of good judgment. When I speak of a viaduct from points A to C I am referring to the designations on Respondent's Exhibit

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16. It is shown on that Exhibit outlined in red as a viaduct site extending across the cattle yard and across the Burlington main line. It is the old location of Franklin Street.

Now, with respect to the 30 acre tract of which I speak, it is more than present Government Zone 3,—a part of it is included in Government Zone
604 2. That part extends from the southerly line of the 30 acres north to Race Court. The remainder of this original 30 acres is now approximately 19 acres and is what is known as Government Zone 3. There are then roughly 11 acres of the original 30 acre tract now either in cattle pens or with a hay barn and manure dump on it. There is also included therein Race Court, the roadway, which, according to the scale of the map, is about 60 feet wide.

605 I feel that this purchase was a prudent investment and one of good judgment because its purchase has materially reduced the amount of expenditures which otherwise would have been necessary and the amount of operating expenses we would have had had we not made the purchase. Portions of the tract were immediately utilized by the hay barn, hay storage and manure dock and by Race Court and new pens on the Franklin Street area.

Manure dump and dock distinguished.

At this point I would like to explain the distinction between a manure dump and a manure dock. We use the manure dock in Zone 2 for dumping into railroad cars and for dumping during the wet weather on concrete that we have laid at that point. We dump manure on a large part of Zone 3 where the land is vacant. The manure dock is an elevated dock of wood construction, high enough so that we can dump into railroad cars on one side and on a concrete base on the other and has a ramp or in-

Trans.
1606 cline up to this level. We dump on the concrete where it is loaded on to trucks by the people purchasing the manure.

The cattle pens at the northerly end of the cattle yard were extended into the 30 acres in 1928. The benefits of this 30-acre purchase, which required an outlay of $90,000.00, were that we were able to close Franklin Street, thereby consolidating all operations and saving an expenditure of $200,000.00 for a highway viaduct. We were able to avoid the building of a large packing plant at this end of our property, thereby avoiding the expenditure of $55,000.00 per acre for double decking when the room was needed. We were able to have land where hay barns could be built and hay could be stored, with a material saving to producers as will be explained later. All of these other items would have been in the rate base without question, both initial expenditures and operating expenses. It is my opinion and the opinion of the management that all of this land is used and useful in the handling of livestock in commerce and that the purchase of all of it was *a matter of good business judgment.*

It would not have been feasible to have purchased only that portion of the tract south of Race
1609 Court for several reasons. In the first place, we could not have gotten that portion at the price of our option, to the best of our knowledge and belief. If we had paid more for the 10-acre tract than our option price, it would have fixed the balance of the tract had we attempted to buy it later, and all of the time we would have been running the risk of not being able to purchase it. Had we only purchased the smaller tract, it would now be completely utilized and we would have no land for expansion at this end of the yard. Lacking the power of eminent domain, we cannot afford to take

No power of eminent domain.

rans.

these risks,—that is to say, the producer cannot afford to have us take the risk of not being able to meet his demands.

How land in Zone 4 was created.

The land in the northerly end of Zone 4 was not available for expansion of the cattle yard, hay storage, etc., at the time of this purchase. The Platte River at that time ran through this tract and the bulk of that area was in the bed of the river. The establishment of the official channel of the Platte River to lessen the flood danger and the filling in of the old river bed has made this piece of land in Zone 4 available. That, however, was not until about 1931 or 1932.

Q. Assuming that the Yard Company, even though it had to pay an increased price for land with possible improvements thereon requiring wrecking, in order to obtain ground for expansion, would that meet the Yard Company's needs and be fairer to the producer, in your opinion, than permitting the Yard Company to own and hold land for expansion and include it in the rate base?

Producer would be injured by government rule, on expansion land.

610 A. No, I don't think so. Suppose, for example, that the packing plant at the north end of the yard had been built and it was imperative for us, irrespective of the cost, either to acquire that land and wreck the packing plant in order to utilize the area for pens, or to double deck the yard at a cost of $55,000 per acre. The need being there, these expenditures would certainly be allowable as capital expenditures and included in our rate base, but if the price paid was such that the rates charged were insufficient to render a fair return upon that investment, we would have the theoretical right to apply for an increase in rate under the Packers and Stockyards Act,

Trans.

but as a practical matter we could not do so if it brought our charges out of line with the charges at other markets. We do not have a monopoly and are in competition with the other markets and cannot be on a different basis. It therefore requires judgment on the part of the management as to how much we get into our capital account. We owe a duty to our stockholders who have this investment, as well as to the producer and patron and I think it goes without proof that if the expenditure to provide the necessary expansion land or expansion of facilities through double decking was so excessive, that the present rates would not give a fair return upon the investment, the expansion of facilities would not be made, and this would be to the detriment of the producer and patron on the assumption that such expansion was, in fact, necessary. In other words, I feel strongly that the question of when property for expansion is to be acquired must be left to the management, and, in the absence of proof of abuse of discretion, the value of such land so acquired should be included in the rate
1611 base. I think that is fair to everyone.

Resp. Exhibit 17.

I have prepared an exhibit marked Respondent's Exhibit 17, which exhibit is based on the 1930 val-
1612 uation case, B. A. I. Docket 301. This exhibit shows what property the Secretary, at that hearing, eliminated from the rate base as not being used and useful and what property he allowed. At this point I would like to discuss those eliminations, stating the uses to which the property is put, the reasons for its retention by the Yard Company and certain other facts which, in the opinion of the management, entitles these properties to inclusion in the rate base.

Trans.

1614 In the 1930 hearing, Docket 301, the Secretary did not allow as used and useful any of the land north of Race Court in Zone 3; the larger part of Zone 4; any of Zone 5 across the river; any of Zone 6 except the roadway; any of Zone 7, and that part of Zone 9 occupied by the Stadium, so-called hook-up shed, tile barn and Club Building. We are assuming that the remainder of the property which the Secretary allowed as used and useful in 1930 will also be allowed in this case, practically all of it being occupied by pens, buildings and facilities used in the handling of livestock in commerce.

Resp. Exhibit 17 explained.

For ready reference, and in order that the matter may be made clear, Respondent's Exhibit 17 is an airplane photograph of the Denver yards taken in the fall of 1934, showing all of the property. On this photograph, the property colored green was allowed by the Secretary as used and useful in the 1930 hearing. The property colored red was not allowed by the Secretary in the 1930 hearing as used and useful, and the area in yellow is that occupied by railroad tracks.

Zone 4 extends from the C. & S. right-of-way at the southerly end of the property, this extending from the upper part of the photograph along the river, largely between the river and the railroad tracks, to the old Blayney-Murphy plant at the northerly or lower right center part of the photograph. All of this land has now been filled substantially to the level of the stockyards property, except a very small portion at the northerly end which is now in process ~~of~~ filling. The sewage and drainage from the stockyards is handled by independent sewers owned by the stockyards company, and not connected with the city sewerage

Sewer outlets in Zone 4.

1615 pany, and not connected with the city sewerage system, into the Platte River at various points along this tract, the outlets being five in number. The sewer outlets of the stockyards company are marked

Trans.

with an X. It will be noted that these are at frequent intervals and that it would be practically impossible to own this property in strips for the accommodation of these sewers. If we did not own this land, it would be necessary to secure it for this purpose. The railroad tracks of which I just spoke, colored in yellow, were not allowed in the Secretary's order of 1930, the basis of such disallowance being that they were considered a transportation facility rather than that they were used and useful to the stockyards.

Fire protection.

Continuing now with Zone 4, there is a road going the full length of this zone outside of the railroad tracks which is used for general service and for fire protection, this being colored black on the red. If a fire should occur in our hog or sheep division, near the river, it would be necessary for the fire department to take this route in order to reach the fire, it being impossible for fire equipment to get to the seat of the fire through that part of the hog and sheep barns adjoining *the road* through the center of the yard. Owning the land to the river bank enables the fire department to use river water
1616 when necessary or desirable. Since the Chicago fire and the resulting heavy losses to insurance companies, underwriters and the fire department have gone over our property very carefully and have been insistent that access be available to all parts of the property, otherwise we would suffer a material increase in rates. It was for this reason that passageways were cleared around the Exchange Building during the fall of 1934, and the road outside the railroad tracks in Zone 4 was provided. Obviously, lack of access for fire equipment to the back end of the packing plants of Armour and Swift would create additional fire hazards for the property of the stockyards company, and an increase in rates. In the exchange of property for the improve-

ans.

ment of the Platte River channel, the city reserved for the extension of 48th Avenue across the river to a point west of Swift & Company a portion of land on the east of the river as a bridge site if and when necessary.

The owning of land, establishment of roads, etc. for fire protection is most assuredly an obligation, duty and proper capital outlay of the Stock Yard Company, both from the standpoint of our stockholders and our patrons. Both expect, need and demand continuity of the market and it would be an unnecessary hazard if we did not own and maintain means of prompt access to all parts of the yard and to the industries on which the patrons' business is dependent.

Mr. Christensen testified that we did not own sufficient land for a roadway at certain points along
17 this zone. The roadway is built along the entire zone and at one point may be on Swift and Company's land to some extent. However, that does not prevent us from using the roadway. For all practical purposes we own a road along the entire length of Zone 4 at this time.

Sewer outlets.

In addition to the five sewer outlets through Zone 4 which I have already mentioned, there are four sewer outlets through Zone 4 for the Swift and Armour plants. We were required to provide these outlets in order to secure the continuance and enlargement of these plants and the development of the market. A patron of the yard receives the benefit of these provisions through the competition and demand Swift & Company and Armour & Company provide on the market. These two companies in 1934 purchased on the Denver market a total of 1,523,307 head of livestock, and paid yardage on 146,505 head of direct hogs, thus contributing to the income and revenue of the yard

Trans.

company a substantial amount which otherwise would have to have been derived through increased rates in order to secure a fair return on the value of our property. The producer is thus benefited substantially in addition to the benefit from the increased market demand.

There are, in addition, certain other uses for Zone 4 in prospect. I will testify as to those a little later when I am dealing more specifically with land held for expansion. We feel that our present use of Zone 4 is more than sufficient to justify ownership and the inclusion of its value in the rate base, but there are other uses to which portions of this zone are now put and to which other portions will immediately be put which further demonstrate the need for this zone. The northerly
1618 end of Zone 4 is now being partially used for a hay barn and for the storage of hay in stacks. The southerly end of Zone 4 has now been filled almost completely and we expect to use the same in the immediate future for parking trucks in conjunction with Zone 6 as our trucking business grows. With the improved roads, changes of method of transportation, etc. the trucking business is growing and we feel frequently is growing with unfortunate rapidity. It is a condition, however, which we must face, and if our patrons desire to use the truck or find it more convenient than the rails, we must be equipped to handle that business, and this use of Zones 4 and 6 is very imminent. When I say that the trucking business is growing with unfortunate rapidity, I mean that it is growing at the expense of the railroads. We regard that as an unfortunate thing because we are equipped to handle a good volume of rail business. A growth in the truck business means that we must build additional facilities to handle the business in the way the pro-
880 ducer desires it handled. We feel that movement

Growth of Trucking affects use of Zones 4 & 6.

Trans.

by rail is more economical for us, and on account of our transit arrangement, better for the producer.

1619 Zone 3 includes all of the land of the stockyard company north of Race Court, this being the area colored red in the lower right hand portion of the photograph. All of it was eliminated in 1930. A sewer outlet of the stockyard company today exists at the point X, this having been constructed for the draining of the manure dump since the last hearing when the Secretary excluded all of this land. Manure sales of the stockyard company for the past five years have totaled $16,786.72, or an average of $3,357.34 per year. A very large part of this has been because the company has had land or a dump available where manure could be stored until a demand existed from truck farmers and others. These people will not haul manure while the weather is bad, during the growing season, or while harvesting their crops. For the proper handling and storage of this manure, and for efficient operation of the yards, both a manure dump for use in wet weather and for dumping into cars, and some vacant land for dumping in dry weather, is necessary. The availability of both of these results in reduced operating expenses as a result of decreased haul and lower disposal expense. If we did not so arrange our operations that we could sell manure, it would be necessary to erect a disposal plant, or to dump into cars and pay switching charges or freight charges on the manure to some point where it could be dumped, and pay unloading expense. At other yards where this is necesssary, such disposal expense runs up to $25.00 per carload. We cannot dump manure in the Platte River or along its banks in the City limits; neither can we dump on land
1620 adjacent to packing plants, because the Bureau of Animal Industry of the Department of Agriculture has forbidden us to do so. It was the subject

Use of Zone 3 described.

Trans.

of some correspondence between us and that Bureau. I have copies of that correspondence, which are here designated as Respondent's Exhibit 18. It is a copy of correspondence between the Bureau of Animal Industry and The Denver Union Stock Yard Company relative to our dumping manure in close proximity to the Armour & Company plant in 1915. The Department advocated that we load the manure on cars and take it clear away from the stockyards and packing house area, which would have cost $25.00 per car plus the cost of the land in the country on which the manure was to be ultimately disposed. Dr. Miller, assistant to Dr. Mohler, came to Denver, conferred with Mr. Shoemaker and agreed that there would be no objections to dumping above Race Court, which was sufficiently removed from the packing plants so as not to be objectionable. This was one of the reasons the 30 acres was purchased, as it was either that or build an incinerator requiring a large capital investment and operating expense, or load on cars and pay the disposal expense of about $25.00 per carload, neither of which expenses and capital outlays the management then thought or now thinks to be advisable.

Manure dock. 1622 The manure dock is not on Zone 3. That is on the northerly end of Zone 2 and has been extended. For some years we had a 75-foot wooden manure dump or dock, which was erected in 1917 at the northerly end of Zone 2. It was not only repaired extensively but a 150-foot extension was made in 1934. The value of the present structure is approximately $7,000, including sewerage and paving. It is only intended for dumping into cars and during wet weather when we cannot dump on vacant land. We cannot use this space at all times because it would soon become too full and we would have no space for dumping manure during wet weather if we did so. We must use our vacant land for this purpose during

dry weather when we can get trucks and teams onto it.

We use a portion of Zone 3 immediately above Race Court, totaling about 10 acres, for the dumping of manure and for manure storage during dry weather. This zone totals 19.825 acres, of which 7½ acres are used as a feed lot. The average income of $3,357.00 annually from manure sales caused by the method in which we handle this commodity is the carrying cost on $48,000.00 at 7%. Allocating $7,000 to the dump, we have left the carrying cost on $41,000 of vacant land by the manure sales themselves, plus the material saving in operating expense by being able to dispose of this manure on the property instead of finding it necessary to move it to some other location for disposal. In other words, because of our method of handling,

Manure sales profitable.

1623 which requires vacant land, we can carry $41,000 worth of vacant land, or 10 acres, at $4,100 per acre. On the land in Zone 3 where this manure is dumped during dry periods, the Government appraiser found a value of $3,500 per acre, and our appraisers $8,000 per acre. At the Government value, the revenue received from manure sales, deducting the value of the dump, would carry 12 acres of this land at 7% interest, or substantially all of it not used by the feed yard. This manure revenue goes into our general income from stockyards operation.

Q. Now, Mr. Pexton, Mr. Christensen implied that we only use, the Stock Yard Company only use a small portion of Zone 3 for manure dumpage or manure storage and also stated that in his opinion the area in Zone 2 around the manure dock was ample for all our manure storage; what are the facts in regard to this? 883

Trans.

A. We use portions of Zone 3 every year for manure storage. The amount of use is dependent to a certain extent upon the weather. I remember about four or five years ago when we had considerable snowfall during the fall that we not only used every available portion of vacant land in this zone but also other vacant land in various parts of the yards, such as land to the easterly side of Zone 2. That is, we also used the manure dump to its full capacity and piled a great deal of manure with a clam shell on a portion of Zone 2, just to the east of the manure dock. Even then we did not have sufficient room. The past two years on account of the dry fall season we have not dumped as much manure on Zone 3 as we have other years, but if we get into a wet cycle, as we undoubtedly will, based on past experience, I doubt if Zone 3 would be sufficient vacant land for a normal fall business.

1625 (Witness continuing). The difference between a wet season and a dry season is that the possible purchasers can get to it and remove it. Another difference is that more manure is created during a wet season because more bedding is used and the pens do not dry out and there is therefore a great deal more to haul out. If the season is dry there is not near as much manure to be disposed of. Also, truckers and gardeners taking our manure supply cannot get on to their fields in wet weather and will not haul manure and we have no choice except to store it until such time as they will haul it. The purchaser wants dry manure and does not like to buy or haul wet manure, and if we pile it in high piles it will not dry out so he will take it.

We made a deal some years back with a com-
884 pany who intended to process the manure of The

Trans.

Denver Union Stock Yard Company and contracted for our entire output. These people purchased the clam shells for approximately $9,000 and they employed two clam shell operators to handle it. Piles were made after a great deal of trouble and expense up to 20 to 25 feet high with this clam shell. However, the operating expense was so terrific that it practically ate up any possible profit there might have been from processing the manure. We find during wet weather that it is extremely difficult to get a clam shell that will handle manure.
1626 We have handled it in dry weather or if it contains a certain amount of bedding, hay or other refuse which the clam shell can get hold of, but in wet weather it is practically impossible to handle it successfully.

The two clam shell operators received wages of $10.00 a day each. However, at the present rates you could probably get one operator and a helper at about $15.00 a day. However, in the light of that experience we would not attempt to handle our manure in that manner again.

With respect to what is done with manure at other stockyards, Mr. Christensen mentioned in his testimony the fact that at Sioux City the Yard Company was able to pile manure 15 feet high by driving wagons or trucks over manure previously dumped. We have found we cannot do this unless the manure is left on the dump permanently and packed down. This may be done at Sioux City but cannot be done if manure is sold as it is in Denver. If we did this we would lose the income from manure sales. At Sioux City the Secretary allowed 385,198 sq. ft., or 8.84 acres for manure dumping, at *a value of $5,665 per acre, or $50,-* 885
075.74 for manure disposal in the rate base.

In the Omaha case the Secretary allowed $70,000
1627 as the reproduction cost of the manure incinerator at that point, plus land value. Omaha also has a material additional disposal expense in rail movement of manure from the yards to the bank of the Missouri River which was allowed.

At the time of the hearing in Docket 301, certain plans were introduced in evidence showing proposed developments in the area north of Race Court, now Zone 3, and on the land opposite the sheep barn, on the west side of the river, which is now Zone 5. The majority of the plans we had at that time have not developed, largely because of the business depression and the uncertainty that has existed the past five years. Consummation of part of these plans for expansion have also been delayed awaiting decision by the Interstate Commerce Commission on westbound meat rates from Denver, complaint of which was filed in 1931 and decision of which will probably be rendered in the next two or three months, the final oral argument before the Commission in that case having taken place last October.

The part of these plans, the consummation of which has been so delayed, is the plans for increasing our hog division. Our facilities for handling
1631 hogs are quite inadequate. A new hog barn should be built. Present facilities are not sufficient for present receipts.

1632 Another matter to which we must give consideration is that of providing parking space for our patrons. This is certainly a stockyard necessity if the competition is going to be met. With modern transportation, means of taking care of the patrons of the market is a stockyard service having to do with the marketing and sale of livestock in commerce. All of the auction sales provide ample park-

Parking space.

Trans.

ing space for all patrons and visitors. When country people come to our market and do not find a place to park within a reasonable distance of the yards, they become vexed and are inclined to patronize other points which do provide reasonable accommodations. Many producers shipping by rail now drive their cars to Denver instead of accompanying the livestock on the railroad. We receive frequent complaints from our patrons about the inadequacy of our present parking accommodations.
1633 At this time the Stock Yard Company land devoted to public parking is very limited. Our patrons are using a strip of land between the horse and mule division and the Burlington right-of-way which belongs to the Colorado Eastern Railroad Company. However, this can be stopped on five minutes' notice if the owners wish.

Need for expansion of Hog facilities.

It is true that earlier in my testimony I gave figures showing a prospective decrease in hogs for the season 1935-36 and yet I feel there is need for a new hog barn. There has been a continued increase in hog production in eastern Colorado and western
1634 Kansas and Nebraska for many years and the maximum production has not been reached. We also feel that when the rates on packing house products and meat westbound are adjusted, a much larger portion of this traffic will come to the Denver market for slaughter than now comes there. We feel the prospective reduced receipts for 1935 and 1936 which we have testified to is only a temporary condition which should be remedied at least by January 1, 1937, and for that reason, although we are faced with substantial decreases in the next year and a half, that production will be back to normal and will increase from that period on. We plan on erecting a new hog barn, when we build, north and back of the Exchange Building, and the Drive-in Division for cattle and hogs west of the

Trans.

Exchange Building between the chute house and the U. P. tracks. This will relieve the present congested condition in the sheep barn and permit us to use all of the facilities in that section for sheep. Mr.
1635 Christensen suggested we erect a double or a triple deck structure on the location of the present hog facilities, using the first floor for hogs. Such a structure would not increase our present hog facilities but would, in fact, decrease them to the extent that ramps being necessary to reach the second floor, would occupy space on the first floor. Additional drive-in facilities adjacent to the present drive-in dock, as he suggests, would also decrease the amount of available space in the hog barn. This plan would also shorten the so-called C. & S. loading and unloading docks which are common to all lines, and are used for all classes of livestock, from a 13-car dock to an 8-car dock, which would slow up both loading and unloading. The track for this dock is owned by the stockyard company. We, at this time, have ample unloading docks limited exclusively to one or two lines such as the Burlington or U. P. dock, but are short of docks common to all lines. A double-deck concrete barn in the present hog division would occupy a space 208 feet by 528 feet, or 109,824 sq. ft. The cost would be approximately $300,000. A one-story frame barn in the location adjacent to the Exchange Building of the same size would cost approximately $110,000. Our plan would save an investment of $190,000. It would also relieve the
1636 congestion on the roadways leading into the present drive-in division, which is now quite serious and which will be materially more serious as the drive-in business expands and more unloading chutes are necessary. This plan will, of course, require the extension of the cattle yard into the land across Race Court. Just when this development will take

Trans.

place we cannot say, but we do know that a favorable decision in the West Bound Meat case will make the improvement necessary.

Plans north of Race Ct.

Location of the proposed hog barn adjacent to the Exchange Building will require the abandonment of the 194 carload cattle pens, and 183 catch pens, a total of 377 pens. The stockyards engineer has prepared a blue print of the proposed cattle pens across Race Court to replace the cattle pens of which I have just spoken. This blue print is now marked Respondent's Exhibit 19. This proposed division will provide 260 additional pens, or not quite the number that will be abandoned. We will also convert into normal size pens the three large pens at the north end of the present cattle yards.
1637 This plan will give us better facilities, more capable of expansion; will relieve present congested roads; will provide parking space for our patrons; will enable us to compete with auction sales and others. Providing such facilities will enable us to provide better fire protection for our yards; will provide more space than Mr. Christensen's plan; and will save a very large capital investment, which, when made, would go into the rate base.

The pens from the cattle division vacated would simply be moved to the new location. The net saving would be something less than $190,000, probably around $125,000. Race Court divides this new cattle area from the present cattle area, but we would endeavor to close Race Court the same as we did Franklin Street. Owning the land on each side of the roadway, we believe that this could be done at relatively small expense and with little objection from the City and County officials, because we would move the highway to the county line at the extreme north end of our property, this being the county line between Denver and Adams

County, and the expense of maintenance of the road would then be thrown on the two counties, where it should be since the road with which it
1638 connects is an Adams County road. We have reason to believe that the officials of Denver County would not object to this change.

In order to take care of the situation caused by the fact that we are already using 10 acres of this tract north of Race Court for manure dumping it would probably make it necessary for us to purchase a part of the old Coffin Packing Company site, the improvements on which have now been torn down. We could, of course, utilize some of the ground across the river, but that would necessitate a long haul and possibly a bridge, and our present view is that it would be more economical to buy as much of the Coffin site as would be necessary.

Zone 6 for truck parking.

The land in Zone 6 at the southerly end of the yards is now being filled as rapidly as filling is available. We plan on using this zone for parking empty trucks and also for the storage of loaded trucks which arrive faster than we can take care
1639 of them. The City and the C. B. & Q. are now proposing to put a subway under the Burlington right-of-way on 46th Avenue and to close the road running along the C. & S. right-of-way south of Zone 9. This will require a much wider approach and a wider road on Zone 6 than at present, because the subway will come under the Burlington track and will be lower than the average level of Zone 6, and therefore we will have to have a turning radius there as well as an incline, and it will take a road quite a little wider than we now have joining 46th Avenue. We have been occupying a part of the C. B. & Q. right-of-way between the Exchange Building and the C. & S. right-of-way

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for a road, by sufferance only. Our truck business is growing. Our roads are narrow and our location is such that we cannot permit long lines of trucks to extend over railroad tracks and on to 46th Avenue. It congests traffic and slows up all movements. At other markets City authorities have prohibited long lines of trucks standing on streets to unload and have required the stockyard company to provide space where they may wait their turn without interfering with traffic and increasing road hazards. As our truck business grows, we will be compelled to use all of Zone 6 for the parking of empty trucks or for the storage of loaded trucks,
640 particularly when the new hog layout is built. Conditions might also require the use of Zone 7 for this purpose; however, the volume of business will control that.

Zone 5 for sheep shearing facilities.

641 With respect to Zone 5, some years ago we secured from the railroad a transit arrangement to permit the stopping of sheep at Denver 60 days for shearing and further finishing. At that time we expected to build facilities to handle this traffic immediately. Due to the depression and the low price of wool and lambs, which discouraged shearing of feedlot lambs, this improvement was not made. Lack of it, however, has cost us a material amount of business because if the lambs are shorn at Denver, they will likely also sell here. If lack of facilities compels them to go east to some point such as West Chicago, Montgomery, Ill., Lincoln or Valley, Nebraska, to shear, we have no possible chance to receive the marketing charge or any other revenue from such lambs, and the shipper is deprived of the advantages of a nearby market.

We expect to use the land across the river, known as Zone 5 for a sheep-shearing layout. The shearing and feeding of sheep is a stockyards service in the

Trans.

marketing of livestock in commerce, the same as branding, dipping, etc. We lost the sale of 60 cars of sheep from one northern Colorado customer this spring because we did not have these facilities.
1642 This would be one which might not yield the full carrying cost in the shearing yard considered in and of itself, but would yield a substantial profit when the other revenue it creates for the company as a whole is taken into consideration. If a charge was provided which would yield the full carrying cost, our rates would be so out of line with competing yards that we would secure no business.

Zone 4 entirely used.

The land in Zone 4 is now all used and useful in the handling of livestock in commerce. We expect, however, to use it still further in the future. Land at the north end is now used for the storage of stack hay and was so used during the fall and winter of 1934. We have found it advantageous to our patrons to purchase large quantities of hay in the late summer and early fall, storing it for use during the fall and winter. During the late summer of 1934, 10,000 tons were so purchased. Our average cost of this hay was about $18 per ton f. o. b. Denver, or $14 per ton f. o. b. mountain loading points. During the late winter and spring of 1934-1935 hay sold up to $24 per ton in the same localities where we purchased it for $14. Had we waited until the
1643 hay was required from us, or had we had no storage space, the cost to us and to our patrons would have been an average of about $5.00 per ton higher. It is essential that we have vacant land for this purpose.

Hay storage benefits patron.

Material yard.

At this time D. & R. G. W. shipments coming in over the Dotsero Cut-off are switched by the C. B. & Q. and are largely unloaded at the chutes of that company on the easterly side of the yards. Arrangements are expected to be made shortly whereby this traffic will be switched over the North-

Trans.

western Terminal line, which enters the yard at the northeasterly end. When this is done, we will be forced to build some additional loading and unloading chutes along the west side of the north end of our cattle yard, which will require the immediate removal of our material yard to Zone 4.

Zone 8 was allowed as used and useful in Docket 301 for the cleaning of trucks of our patrons. It is still so used and should be allowed.

Zone 9, our horse and mule and Stock Show Division, was also allowed as used and useful in Docket 301, except the Stadium, the so-called hook-up shed, the tile barn and the club building. The use of the Stadium and its value to the market and its patrons has already been shown. The so-called hook-up shed is used 51 weeks of the year for the feeding and yarding of horses and mules being handled in commerce, and should be allowed as
1644 used and useful. The tile barn is used in connection with the horse and mule business and with the Stock Show, and for such other purposes as are necessary and which will provide revenue to the Stock Yard Company. The club building was constructed about 1907 to serve as a restaurant and meeting place for the patrons of the market. At that time there were no ample or suitable facilities for feeding patrons of the yard, there not being room in the Exchange Building for a restaurant. The club building served the purpose for which it was built; it was a material factor in the building up of the market and in creating contacts between those on the market and both sellers and buyers. It was a prudent investment at the time and should be allowed, either as used and useful property or as one of the development costs of the market. The lower floor is now leased to various people for all the rental we are able to obtain.

Club building.

Trans.

Zone 10 required for gravel.

Zone 10 was allowed at the previous hearing as a source of gravel to the Stock Yard Company, substantial amounts of gravel being necessary in stockyard operation. Some gravel has been taken out of it from time to time; however, the major part has been coming from Zone 3. Recent levels taken on Zone 3 indicate that all of the gravel now in that zone will be required for leveling when that land is used for pens, and for that reason we have discontinued further use of gravel from Zone 3. This will force use of the gravel in Zone 10, and that zone should be allowed. The revenue from gravel sales goes into general stockyard income. The use of gravel at a stockyards is a humane matter. The Stock Yard Company sands the alleys around
1645 scales, loading chutes, etc., during icy and wet weather.

Resp. Exhibit 20 described.

1646 I have prepared an exhibit which, in effect, summarizes my testimony visually. That exhibit is now marked Respondent's Exhibit 20. It is a photograph showing the various zones with the Government designation and numbering, and superimposed on these are certain colors. The area colored green is the part which I have testified and which the management now feels is fully utilized in the handling of livestock in commerce. We have included all of Zone 4 in this allocation because, as I have testified, it is now fully used and necessary for fire protection, sewer lines, roadways, hay storage, etc. We have included all of Zone 3, for reasons which I have given, and Zones 8, 9 and 10 are also included in this area. The various areas colored yellow represent the land occupied by railroad tracks and which we claim are also a stockyard facility for the handling of livestock in commerce. Zones 5 and 7, and a portion of Zone 6 not occupied by the roadway, are colored red. This

Trans.

area, as I have testified, is needed for expansion ground for the extension of our facilities and for the better service to our patrons.

1647 On page 493 of Government Exhibit 5, Mr. Christensen lists about 5.5 acres of land as easements granted to the City and County of Denver and as Class B or not used and useful facilities. We own this land and pay taxes upon it. The only right granted to the City under these easements is for a right-of-way for maintenance of the river bank. This is a facility we need whether it was granted to the City or not. We have ownership to the ground and use it for such purposes as we desire, without consulting anyone, such as sewer crossings and outlets, but we are relieved of the maintenance of the river bank, a work we were formerly required to do at some expense. Prior to the building of this channel we were also threatened with damage claims when we built up our side of the river on account of diverting flood water to the other side, causing floods on that side. Granting of these easements has improved our property, relieved us of claims and reduced our operating expense.

River embankment easements.

When I stated that due to the competitive situation the Denver Stockyards, not having a monopoly, could not be on a different basis from other stockyards, I didn't mean that we couldn't vary from them a few cents per head in our yardage charges, but I do mean that if we were to make very large investments which would raise yardage rates, say, from 35 to 50 cents on adult cattle, in order to accord a fair return, I think the business would move to the point quoting the lower rates. We can vary from other points to some extent, but
1648 not to a major extent. In other words what I mean
is that we could not be on a materially different 895
basis from the other yards.

Trans.

Resp. Exhibits 17, 18, 19 & 20 offered.

Respondent's Exhibits 17, 18, 19 and 20 identified by Mr. Pexton and testified to by him, were thereupon offered in evidence and the ruling deferred until after cross-examination.

1649 (Witness continuing) The Stock Yard Company owns 17,559 feet of railroad tracks within the yard. It does not own any railroad tracks outside of the yard. Figuring standard clearance, these tracks occupy 5.45 acres of land within the yard. This is not the only trackage within or adjacent to the yard. The U. P., since early in our operations, has owned a 50-foot right-of-way and track which goes through the heart of the yard. This track is used jointly by the U. P. and the C. & S. It has proven most unfortunate and we wish we might terminate that ownership. It separates our yard in half and increases our operating expense. The unloading chutes adjoining this right-of-way on the east may

R R Trackage.

1650 only be used by these two companies. Also, on the easterly side of the yard, our property adjoins the right-of-way of the C. B. & Q., that company owning the tracks but we own the chutes. Because of this ownership of the tracks, other lines cannot use these unloading docks. After experience with this kind of operation, whereby one set of chutes would be congested and the other empty and unable to be of use, the Stock Yard Company started building their own tracks and making them common to all lines, this being the condition that now obtains with the so-called quarantine chutes directly across from the U. P. chutes.

Necessity for Yard company ownership of tracks and chutes.

The land and trackage owned by the Yard Company is leased jointly to all the railroads on a maintenance, interest and tax basis. The carriers pay all costs of maintenance, 6% interest on a total value of $121,984.49, and the *going* tax rate in the City and County of Denver on one-half this

value. The average income for the past five years on this investment of $121,984.49 is $10,564.78. The value of the tracks, as found by the Government engineer, is $58,664, leaving for the land value $63,-320, or an average of $11,600 per acre.

Advantages of Yard Company ownership of trackage.

These tracks are owned by The Denver Union Stock Yard Company better to serve our customers, to reduce our operating expenses, and to avoid the necessity of making larger capital expenditures. In addition to avoiding the disadvantages of single
1651 carrier ownership to which I have just testified, ownership by the Yard Company prevents restrictions which might hamper the market or the outlet for livestock and livestock products, and whatever we can do along this line is a benefit to the producer. The joint use of tracks by all carriers for incoming and outgoing shipments of livestock aids the market, but that is only part of the story. The packers are a steady and important outlet for fat stuff and if the movement of meat and packing house products is facilitated, it tends to increase the slaughter and the local buy. Accordingly, it has been and is our business judgment that it is advantageous and for the good of the market to have stockyard company tracks common to all lines serving the packing plants. This means more rapid movement and better service on these shipments without congestion.

Having railroad tracks of our own with unloading chutes has enabled us more rapidly to unload shipments of livestock coming into the market, thereby getting them on feed more promptly and the patron receiving a heavier fill on his livestock.
1652 This is definitely to the advantage of the producer. Delays in the placing and unloading of livestock have been very much less since the Yard Company developed its tracks and built unloading chutes to serve them than prior to that time. There is also

Trans.

an additional value through ownership of tracks and right-of-way to the Stock Yard Company by being able to change, remove or otherwise revamp to suit our requirements, which would not be possible if ownership did not rest with the Yard Company and it were necessary to consult other people and secure their permission. Railroads are notably reluctant to give up industrial track advantages they may have, or to permit others to use those tracks. The arrangements we have at the Denver Stock Yards result in all lines being able to use all of the Stock Yard Company tracks on an equal basis, and, in effect, places industries served by stockyards tracks on the rails of all lines entering Denver, a condition that does not obtain in any other part of the city.

Resp. Exhibit 21 described.

1653 I have an exhibit showing the land leased at various times to the railroads and others, now marked Respondent's Exhibit 21. It is a statement showing the acreage leased by The Denver Union Stock Yard Company to the various railroads and to Armour & Company; also land leased by the U. P. Railroad Company to The Denver Union Stock Yard Company for roadway purposes. It is introduced in order that the record may contain the accurate acreage leased for this purpose, and also the allocation as between the different zones. In the original contract with the railroads made in 1919, railroad engineers allowed a total filling of 30,000 cubic yards at $1.00 per yard; 22,500 yards were allowed in Zone 4, and 7,500 yards in other zones.

In stating that the total acreage under tracks was 5.45 acres, and that the Yard Company has 17,559 feet of tracks within the yard, I have not taken into consideration, and these figures do not include, the recent sale to Armour & Company.

Trans.

Furthermore, the figures concerning "fill," etc., to which I have just testified, do not include any fill on the Armour track.

1655 All pens in the stockyards are the property of the Stock Yard Company, and are so considered. Although certain pens may be designated for the particular use of a certain firm, that is for the accommodation of the yard company and of the patron, and no assignment, lease or license for exclusive use goes with such designation. In the sheep barn, for example, certain designations are made for convenience but the yard company takes the position that the second deck of this barn is the sale division and that any sheep arriving for sale shall be yarded on the second deck until it is full, regardless of whether they may be yarded in the designated pens of the consignee firm.

Assignment of pens.

For example, yesterday our sheep receipts totaled a little over 20,000 head. Some firms had more pens than they needed and others had materially less. All of these sheep were yarded on the second deck or sale division of the sheep barn regardless of any pen designation.

The same practice is followed in the cattle yard. The various commission firms are expected to and do co-operate with one another in giving up pens
1656 to an adjoining firm if they are not using them, and the adjoining firm has an over-supply. The designation of pens is simply to provide a location for a firm, based on their average receipts, so that the customers of that firm, who are patrons of the Stock Yard Company may know where to locate their livestock, so that scale facilities may be efficiently apportioned, so that livestock may be weighed promptly and economically and otherwise efficiently handled through the yard, and so that the receipts of any one firm may be concentrated

Trans.

at one point, thereby reducing the costs of handling. If this practice was not followed, a most inefficient and unsatisfactory condition would result, which would not satisfy our patrons; would result in a loss of business and would materially increase our expense. One man's shipment might be yarded in different parts of the yard. One scale might be overburdened, unable to complete their weighing in one day and another be light. Livestock received could not be fed and watered promptly. Operation costs of the Stock Yard Company would be materially increased. Obviously, we would be severely criticized if this practice was not followed.

Different Pens also necessary after sales.

In the efficient and economical operation of a major stockyard, it is necessary that pens be provided for the yarding of livestock after it is sold. It obviously would be impracticable to yard shipments back into the pens out of which they were sold, such pens being usually in the so-called com-
1657 mission firms' division, for the reason that those pens must be cleaned and prepared for new shipments which are arriving. If this practice was not followed, there would often be no pens for the handling of new arrivals. In other words, it is necessary to systematize our operations the same as it would be for any other industry. Our stockyards is three-fourths of a mile long. It is necessary to make allocations and, obviously, operating costs are less when we do properly systematize. We have an obligation to our patrons to so handle the business.

Pens are allocated to dealers, for the same reasons of sound business judgment and economy. For the efficient and economical handling of livestock by the company, certain pens may be designated for the use of a certain dealer based on his average purchases or requirements. First, it is obvious that if such a designation were not made and a deal-

Trans.

er had his cattle scattered all over the yard, his operating expense would be much higher and he would not be as good a buyer as he is under the prac-
1658 tice followed, which would react directly against our patron. Second, it is of direct benefit to the Stock Yard Company to have all of a certain firm's livestock in one location for several reasons. In the delivery of feed, that may be done in large quantities to one point instead of to several points around the yard, as would be necessary if a designation was not made. Because a designation has been made, the firm receiving the designation is expected to and does come to pens adjacent to the scales for their cattle, removing them promptly to their designated division. This results in the company usually having pens adjacent to the scales for the temporary yarding of cattle coming off the scales. For this reason, the designation of pens to dealers results in a material saving to the yard company in operating costs, which, of course, reacts directly to the benefit of the patron. As a matter of fact, it is more expensive to the yard company to handle livestock bought on orders and yarded here and there for out-bound movement than it is to handle dealers' cattle. When loading out, all of the livestock from a certain dealer is usually in his location and the majority of it may be run to the train at one time through one lineup of gates. If the livestock is scattered all over the yard, as would be the case if certain pens were not designated, several lineups of gates and alleys would be necessary in moving to loading chutes and the expense would be very much higher. If we had a
1659 large feeder buyer show up at the yards and we expected him to be here for some time, we would give him a location and endeavor to prevail upon him to handle all of his livestock in that location
for our convenience and the saving of operating 901
expense.

Trans.

As stated previously, it should be borne in mind that any designation is only for the convenience of the Stock Yard Company and its patrons, and that such designated pens may be and are appropriated by the yard company at any time that may be necessary or desirable for efficient operation or the convenience of the patron. The pens in the so-called dealer division at Denver are only designated for a period of about two and one-half months annually. During the year 1934, for example, all of the pens in the so-called dealer division were used for the handling of Government and other cattle much more than they were used by the dealer.

Trader charge impractical and improper.

1660 There has been an indication in this and other similar cases that the Secretary contemplates including in the maximum rate schedule a yardage charge or re-weigh charge in some amount to dealers or yard traders. Such a charge at our market is, in my opinion, improper, impractical and will not produce the income which the Secretary manifestly believes it will produce. Such a rate was provided by the Secretary in Docket 301 but was enjoined, yet it serves as an index of what the Secretary believed then and perhaps still believes such a rate would produce at Denver.

Function of the Yard trader.

The chief function of this class of dealer, when operating as a trader, is to clean up the market and increase the market competition, which results in better prices for the livestock of the producer. What the producer wants, who ships to a market, is that his livestock be sold at the best possible price in the least possible time. The greater the demand, the better the price. If the demand is low or weak, prices are down accordingly and the producer must either accept the low price or ship on to another more distant market with consequent increased feeding costs and risks of shrinkage, etc. Hence, any charge, rate or practice which tends to reduce

Trans.

the market demand is definitely against the producer's interests and against the interests of the Stock Yard Company. In the 49 years of the existence of this market, the business judgment of the management has been and is that such a charge would decrease the market demand, penalize the producer and the company, and is improper, from both standpoints, in our opinion.

Long experience of management shows no charge is warranted.

1661 There seems to be an impression on the part of the Government that our yardage charge so-called is really in effect a charge for the use of the pens. This is not altogether correct. The so-called yardage or marketing charge includes many things beside the use of pens and weighing and it is one of the reasons that such a charge is provided when a patron sells or takes advantage of the market, while it is not provided if he does not take advantage of the market. Obviously, this marketing charge covers more than the use of the pens and the cost of weighing shipments. It includes continual development of the market and the holding of the present buying demand. It includes defense and maintenance of traffic arrangements which make the market attractive to prospective buyers. It includes facilities which would not exist were the market simply a feeding point under the 36-hour law. The shipper in his initial marketing charge pays for these things. The dealer is on the other side of the fence, and, the same as the packer or other buyers, provides in a measure the demand and outlet that has been built up for the shipper.

Marketing charge.

In deciding a policy or practice, all things must be taken into consideration, including the effect a given policy may have upon the expenses of the Yard Company and the price to the shipper. Our policy in this matter is based upon years of experience and the proven fact that more competi-
1662 tion in the market means higher prices, in addition

Policy based on years of experience.

Trans.

to the knowledge that the present practice lowers operating expenses of the Yard Company. Had we felt that a yardage charge one-half the regular rates, or any amount, would have kept dealers in business and still given the patron the same competition in the sales of his livestock, it would have been established at Denver many years ago, but the management after careful consideration now and in the past, feels that any such charge is uncalled for and would be definitely injurious to all concerned at this market. There is no effort or inclination on our part to discriminate between any class of patrons. The weighing of dealer livestock is usually in carlots, whereas that for producers is in much smaller drafts. At Denver, one, or not to exceed two scales, are conveniently located for the use of the dealers. For this expense we feel that there are many compensating economies and benefits to the patron and to the Yard Company, which would not exist if dealers were not operating. It must be obvious that if the volume of purchases by traders on speculation has been materially decreasing the past few years with no charge for re-weighs, which it has, it would decrease much more rapidly and practically to the point of extinction if a toll was made which represents more than their average profit. With the possible exception of packers having plants located at Denver, no buyer on the Denver market is permanently located there, nor is his demand on the market fixed and certain. Much money has been spent by the Stock Yard Company to attract both fat and feeder buyers, and to provide an attractive point for patrons to sell. The
1663 shipper sends his livestock to a market for sale. The demand of those buyers is not doubtful, and, after all, buyers are the most important thing on a market. In all classes of business the buyer is the one who is catered to, the one to whom advertise-

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ments are directed, and the one whose convenience is considered. Elaborate facilities are provided in all lines of industry whether it be union stations, department stores, hotels, packing houses or what-not, to make the use more convenient for the buyer.

Percentage of slaughter at Denver.

Different from most markets, a total of only about 25% of the market receipts at Denver are slaughtered. The remainder of the receipts are sent on to other packing plants or feed lots, and the sale of this livestock could take place at points other than Denver. If there is large slaughter at a market such a demand is relatively fixed and in a measure stabilizes the entire demand on that market. At Denver we have built up a large non-slaughter buying demand, which constitutes the major outlet on the market. It is not fixed and certain at Denver, and if a toll or tax is placed upon it, it need not remain and may not do so. We know from experience that if a burden is placed upon a purchaser, the tendency is for him to leave and handle his business elsewhere, and that in that event the loss will be much greater to both the shipper and the Yard Company than the gain which might be received from those who happened to stay and pay the additional rate or tax. The Stock Yard Company does not care where or from whom it gets its revenue, but it is vitally concerned in any charge
664 which might affect its buying demand, and, therefore, the income of both itself and the shipper. We do not believe our position in this is contrary in any way to the attitude, practices and desires of our patron, the producer.

665 Furthermore, there has been a serious misunderstanding on the part of the Secretary as to what revenue such a charge, if made, would obtain. In paragraph 33 of the Order in Docket 301, (the 1930 case) the Secretary stated that in 1928 traders purchased 330,919 head of cattle and calves, 49,176

Trans.

hogs and 254,411 sheep in 1929. The decision does not disclose just how much revenue the Secretary estimated a reweighing charge would produce on this volume of traffic, but, based on the estimated receipts and the return allowed, he apparently felt it would produce something between $40,000 and $50,000 per year.

In this decision the Secretary apparently did not take into consideration the fact that a large part of the dealer purchases at Denver are on orders or for reshipment to other markets on speculation and not for sale and reweighing on the Denver market. His decision at Denver and other points does not provide for a charge unless the shipments are actually reweighed and it, obviously, would be impossible to collect one.

Reweigh Revenue.

1666 Government Exhibit 43 shows the actual number of cattle, calves, sheep and hogs which were resold on the Denver market for the years 1930 to 1934, inclusive, and on which a reweigh charge would apply in the event it was collectible, which we deny. This exhibit shows that the average revenue over this five-year period, had the same volume of reweighs existed with a charge as we had without a charge, would have been $10,272.89 annually, as shown by an exhibit which I have prepared which is the application of the rates ordered by the Secretary in the 1930 hearing to the figure shown on Government Exhibit 43.

Mr. Pexton's exhibit was thereupon marked as Respondent's Exhibit 22.

(Witness continuing). The basic information for this exhibit is Government Exhibits 43 and 43-A. The difference between this exhibit and the Government exhibits is that this exhibit simply takes the number of cattle, calves, hogs and sheep resold or reweighed on the market, and applies to that

Trans.

number of head the rates provided in Docket 301 which are 14 cents on cattle, 9 cents on calves, 5 cents on hogs, and 3 cents on sheep, and arrives at the total revenue per year for the past five years, also an average of that total. Government Exhibit 43 is in number of head, not in dollars. In other words, this exhibit applies the 1930 schedule of the Secretary to the number of head shown on Government Exhibit 43. It has no relation whatsoever to any charge which is now being made at The Denver Union Stock Yard Company. For example, the 14 cents on fat cattle is not half yardage of the
1668 present rate. It is one-half of what the Secretary provided in 1930. This Exhibit 22 is introduced to show what the revenue would have been the past five years at the rates provided by the Secretary had these amounts been collectible, which they would not be.

Plants bear full charge.

Government Exhibit 43-A shows the sales by commission firms of so-called plants or livestock resold by commission firms for dealers which have previously been purchased by them on the market. At this time, because we feel when so doing this, dealers are taking advantage of the market in the same manner as any shipper to the market, we make a full yardage charge. A re-weigh charge of one-half the regular yardage charge would reduce our past income from this source of 50%. Government Exhibit 43-A shows the total of these so-called plants over the past five years. This revenue averages $582.21 annually. A 50% re-weigh charge would reduce this to $291.10. This amount is deducted from the average revenue, as shown by Exhibit 22, of $10,272.89, leaving a net of $9,981.79. The bottom part of this exhibit shows the 1934 actual, which is within $400.00 of the average, indicating the present actual condition is substantially the same as the average.

Trans.

1669 In 1934, including Governments, we collected full yardage on 488,012 cattle, 113,139 calves, 451,228 hogs and 2,376,234 sheep, or a total of 3,428,613 head.

Our estimated average revenue from a re-weigh charge if collectible and if the same volume of re-weigh were done, would amount to $9,981.79 per year, as I have stated, and that is on the basis that a re-weigh charge would not materially affect the amount or volume of business but in my opinion the volume of business would be materially reduced if a re-weigh charge were applied. Assuming, however, the annual income of $9,981.79 per year, that still amounts to less than three mills or one-third cent per head of livestock paying full yardage. In other words, the application of this charge would only reduce rates paid by consignors to the market, an average of less than one-third cent per head on all livestock paying the marketing charge in 1934. Eliminating Governments, the average reduction would be a little under 3½ mills per head. Our patrons paying the marketing charge include many others than the so-called producer of livestock.

Trader charge not essential.

1670 Packers pay a substantial amount of the hog yardage at Denver. Denver cattle dealers go to the country and purchase large numbers of cattle, shipping to Denver and paying the full yardage. Sheep dealers operating in the country ship large numbers of lambs to Denver for sale. Our California receipts of sheep are largely from country dealers. A substantial amount of this $9,981.79, if the total marketing rates were reduced that amount, would go to patrons other than producers, in fact.

Charge uncollectible.

In my opinion, based upon my experience, if such a re-weigh charge be imposed, not even $9,981.79 per year will be received. This proposed charge and the revenue to be derived therefrom is based

on the assumption that it will willingly or necessarily be paid, that the same volume of traffic will obtain, and that collection of the charge will decrease neither the volume of business nor the prices bid for producers' livestock, none of which, in my opinion, would follow. It is an axiom in the livestock industry that the more the competition, the higher the price. Competition is what actually makes the price. A little added competition can increase the price to the producer twenty-five cents per hundred or $2.50 on a thousand pound steer. Competition at the market is too vital to imperil by the addition of a re-weigh charge which would, in the end, effect no saving to the patron and which
671 might prove a charge against him. Dealers operating for themselves help make the price on the market. If they have additional tolls to pay, they will naturally reduce the price they bid by that amount, and this will leave less competition for order buyers and others to meet, in our opinion. Assuming an initial marketing charge of 30 cents per head on adult feeder cattle and a re-weighing charge of 15 cents per head, the total is 45 cents per head. If a dealer reduces his price bid by an amount sufficent to pay this 15 cents per head, as we believe he will, the effect on the patron is that he will pay 30 cents per head market charge, plus 15 cents per head loss in price, or a total of 45 cents per head on all his adult cattle, instead of the present market charge of 35 cents per head. In theory he may have saved 5 cents per head, but in actual practice he has lost 10 cents.

Transportation affects problem.

Transportation conditions also have changed so as to affect this problem. Until recent years, there was no incentive for dealers on the central markets to leave the yards and go to the country to fill their orders or to buy for resale as there is now. Freight rates were the same through Denver as around the

Trans.

market or if the shipments were purchased at point of origin. Roads were not good in our mountain
1672 districts and automobiles had not developed to the extent they now have. Feeders were not acquainted with producers and auction sales were few.

All of these conditions have been materially changed the past few years. The Interstate Commerce Commission on January 25, 1932, provided that rates on feeder livestock from country points to fattening points would be 15% lower than if the shipments moved through a central market in the West, such as Denver.

Country prices based on Denver.

(Witness continuing). Country prices in the West are based on the Denver market less the freight and other selling expenses. Adding a reweigh charge to the cost of operating at Denver will just drive that many more dealers to the country and the business away from the market, in my opinion. When they go, their competition is removed from the market and the price is that much lower for the producer, whether he sells at home or on the market. It should be borne in mind that on all country transactions some point or market must be used as a price basis. When prices at Denver come up, country prices follow. When Denver goes down, country prices drop also. Any condition reducing competition and thereby lowering prices at Denver automatically lowers country prices. In order that the record may show just how serious this matter is and the volume of traffic that is being sold at point of origin, the Denver market being used as a basis, and the desire of producers to secure the 85% rate, we have made a statement of cattle going through the Denver market, stopping to feed to comply with the 36-hour law, for the first four months of 1935.

910 The statement was thereupon marked for identification as Respondent's Exhibit 23.

74 (Witness continuing). Respondent's Exhibit 23 is a statement showing the cattle moving through the Denver market for the first four and one-half months of 1935, stopping there to comply with the 36-hour law. It will be noted that this totals 432 cars and 18,280 head of cattle. It does not include the total movement by any means, as there were many shipments which did not find it necessary to stop at Denver. The heaviest movement is during the fall. That movement includes both feeder cattle and feeder sheep. Some years back, when going to the country, it was necessary for buyers to go by rail and hire vehicles after arrival to look at the livestock. This was slow and took a lot of time. Automobiles and roads have now developed to the point where it is a short trip for a buyer to go from Denver to Rifle, Colorado, or to the Gunnison district, which produces a lot of good quality feeding cattle. Buyers drive from Denver to points in New Mexico and Texas, as far as El Paso, in one day. Buyers have left Denver in the morning, driven to Laramie, Wyoming, or North Park, Colorado, bought livestock and been back the same day. There is now no great advantage that holds them to the market.

Importance of country auctions.

75 Country auctions also play a part in this picture. During the past three or four years auction sales have sprung up all over eastern Colorado and western Nebraska and Kansas. There are now as many as four of these in one town. They vary from ten to fifty miles apart. Some of these have grown into substantial handlers for feeder cattle. Scottsbluff, Nebraska, for example, is in a district which formerly secured the majority of its feeder cattle at Denver. Today this large feeding district is largely supplied with cattle through the two auction sales existing there. The cattle for the auction usually come from a district in Wyoming which

Trans.

formerly marketed at Denver. The auction sales at Grand Island, Nebraska, now handle in excess of 100,000 cattle annually. These are becoming material factors in competition with the central market at Denver, but the point is that the dealer can go to these points and buy without any rate or regulation of the Secretary and will do so if additional charges are imposed upon him which make the central market less attractive to him.

When I speak of competition in this situation, I am referring to the competition between the auction sale and the central market and the competition between direct buying and the central market. It is a very different competition from that of which I spoke recently as one which tends to raise the price on the market. The former is a competition between markets, whereas the latter is a competition within the market for a commodity.

Dealer part of market.

1676 My point is that the dealer is a part of the market demand required in furtherance of the interests of the producer. His functions are included in and paid for by the marketing charge. Any disturbance of this situation is apt to be detrimental to the industry.

Experience shows no charge warranted.

The Government has proposed for several years the making of a charge on livestock re-weighed at markets. For about the first forty years of Denver's existence as a livestock market, there was no packers and stockyards administration, and any rate or charge deemed expedient could have been charged. The stockyards management has ever been awake to ways to increase revenue, and, long ago, would have made a charge had they felt it was in the interest of the yards and its patrons, the producer. A market only attracts business by the prices it obtains for its patrons and the service it is able to render, not by the cheapness or smallness

Trans.

of its charge. When prices at Denver get out of line with other points or with buying at point of origin, its receipts drop. The result, therefore, is a struggle between markets to increase competition on the market and raise prices paid as well
1677 as to improve service and facilities. That is why dealers and packers have been induced to come to Denver and become active competitors on the market. We know, from experience, that any charge added to the buyer will result in lowered competition, a less attractive market and lower prices to our patron, the producer. When that happens our business will, of course, be materially curtailed, which, if reasonable income on the property is to be maintained, will mean a higher rate on the traffic that is left. Our situation then, were we to make a re-weigh charge applicable, would be comparable to that between the railroads and the trucks where the rails increase rates because of a loss of traffic to the trucks and then lose more.

Management opposes charges on trader.

1678 The fact that such a charge may have successfully been collected at some point east of Denver has, in our opinion, no bearing whatever on whether it can successfully be applied at Denver. Chicago has had such a charge for several years. That market is at the end of the line and may feel they can collect a re-weigh or other charges without losing a great deal of business; however, Chicago has lost a lot of business for some reason. Chicago, for example, collects yardage on a shipment simply feeding en route or trying the market. We know from experience that we cannot make such a charge at Denver and that if we attempted to do so, we would drive far more business away than the revenue from that source would produce. We would like at this time to make a service charge on shipments of hogs moving to California, feeding at Denver. We have built up our business and a fair return on the pro-

Chicago no criterion.

Trans.

perty by making it an attractive place for producers to come to, not by providing rates that would decrease prices or otherwise decrease demand. The Interstate Commerce Commission in the Transit Case 198, ICC, page 73, has recognized the different and peculiar conditions existing at Denver compared to markets further east and we feel the Secretary should do likewise, especially as it is such a small matter converted into cents per animal received and sold.

Different conditions at Denver than at other markets.

1679

I am speaking now of the general proposition of additional charges other than what the management has found in its experience to be advisable. The fact that Chicago can make certain charges has no bearing on our situation here. Chicago makes a yardage charge regardless of whether the shipment sells or not. We do not do this, and we know if we attempted to do so, it would drive away far more business than any revenue from such source might produce.

1680 I have known shipments which have tried the market at Denver, been dissatisfied, moved on to Omaha or one of the Missouri River markets, been dissatisfied there and ultimately sold at Chicago at a loss to the producer who sold there irrespective of price because it was the end of the road. There is no place to forward livestock to from Chicago. There is no substantial or large market at Jersey City or Buffalo, Cleveland or Cincinnati where western sheep producers or cattle producers might be willing to forward their livestock. There was a large amount of testimony to that effect by producer witnesses and commission men in the so-called Transit Case, 198, ICC, page 73.

Different conditions at Denver.

There are certain conditions in Denver which differentiate this market from the Missouri River markets, where such a re-weigh charge has been

Trans.

provided and its collection attempted. We are practically in the heart of the range country and at some distance from the Corn Belt. Missouri River markets are just the opposite. Denver dealers can drive to range-producing territory and fill orders in a very short time. It would require a lot more time and expense for Missouri River dealers to do the same thing. The conditions are entirely different. The demand also is different. Small lot feeders in the Corn Belt usually go to nearby markets to obtain their feeding livestock.
1681 The ones that come to Denver are usually the larger feeders. Small lot feeders cannot afford to go to point of origin for their requirements while large lot feeders, because of their volume, can afford to do so at a small expense per carload or unit.

There has been testimony in this and other cases and it seems to be the feeling of the Department that the cattle dealers' purchases are, in a large percentage, resold on the market in competition with fresh arrivals of the shipper to the market. As the figures show, however, the amount of competition at Denver is small and its effect negligible. Using the year 1934 as representative, according to Government Exhibit 43, traders purchased on the Denver market during the year 204,618 cattle. Of these 15,377, or 7.5%, were resold to other dealers, generally to fill orders placed with the latter dealers; 44,009 head, or 21.5%, were resold to others on the market, which includes sales directly to feeder buyers or to commission firms on orders; 58,296 head, or 28.5%, were shipped to other markets for sale; 68,710 head, or 33.5 %, were purchased on orders placed directly by fatteners with the dealers; 5,525 head, or 2.7%, were purchased by dealers on the Denver market and shipped to their own feed lots; and 12,492 head, or 6.3%, were purchased by dealers acting as agents for packing plants.

Competition with fresh arrivals.

Trans.

1682 To begin with, the number bought on order, 33.5%; those shipped to feed lots, 2.7%, and those slaughtered at Denver, or 6.3%, or a total of 42.5% of the total purchases by dealers were immediately taken off the market and did not again enter into competition with other livestock offered that day or on later days. Denver dealers during the year shipped 58,296 cattle, or 28.5% of their purchases to other markets on speculation. These are usually fat cattle, the fat end of droves of cattle they have purchased, or some particular type of feeders such as heavy feeders, or two-way cattle, which find a more ready outlet at Denver to dealers.

When a dealer ships cattle to another market on speculation, he appears in that market as any other shipper and has to pay at that market full yardage. The cattle shipped on to other markets, although figured in Denver receipts, also figure in the receipts of other markets. Under the Secretary's theory, or the Department's theory, the re-weigh charge would not be applicable to any of these shipments. They would pay full yardage at the latter market and they would not pay any ad-
1683 ditional yardage, half or otherwise, or re-weigh on our market. Yet they are moved out of our market exactly like the cattle bought by any feeder buyer.

1684 As a general rule, when dealers at Denver ship cattle to other markets, the cattle are purchased with that in view, and are moved out immediately. The only exception to this is if during the latter part of the week traders have some cattle on hand which are getting stale, in order to clean up their alleys, they may ship a few to other markets. However, this is the exception rather than the rule. By cattle going stale I mean that after they have been on
916 hand in the yard for several days, they don't look

Trans.

fresh, their hair gets a little off color and buyers on the market get to know them and when they are in that condition they are termed stale.

The Denver feeder market is usually higher than the Missouri River except for the types we have previously mentioned, which are expressly bought for and moved to other markets. These cattle so purchased are bought in the morning and moved out on so-called hot-shot trains at one p. m., and, therefore, do not enter into competition with other arrivals the next day. This, therefore, eliminates an additional 28.5 per cent as coming into competition with fresh arrivals, bringing this total up to 71 per cent. Of the remaining 29 per cent, 7.5 per cent are resold by dealers to other dealers. Dealers do not purchase from other dealers as a
1685 general rule except to fill orders which have been placed with them. If the dealers were not at Denver, it does not follow that the orders would be placed with others at Denver for the reason that dealers are active in securing orders, and if they were not located on the market, but are dealing in the country, it is more than likely that they would obtain the same orders and fill them elsewhere. We may, therefore, properly eliminate this 7½ per cent as coming into competition with fresh arrivals, leaving only a net of 21.5 per cent of the cattle purchased by traders which could actually come in competition with fresh arrivals from producers. Of this 21.5 per cent, a substantial part are resold by dealers the same day they make the purchase. For example, on Monday dealers get out early, make their purchases promptly, get them into their divisions, make the required sorting and sell as quickly as possible. There has been a distinct trend towards this the past five years by dealers in order to eliminate the necessity of purchasing hay to carry livestock over until the next day,

Trans.

or until later in the week. It is our experience that up to 75 per cent of dealer purchases are resold the day they make the purchase. To be entirely conservative, we have used a figure of 50 per cent, which would leave approximately 11 per cent of the total dealer purchases actually in competition with fresh arrivals of producers' cattle the next day at the Denver market.

Actual 1930 experience with trader charge.

1686 The Denver market has already had some experience with such a charge. In September, 1932, in an attempt to comply with the Secretary's Order in Docket 301, during the injuction period, we endeavored to collect the re-weigh charge from dealers with the understanding that if we were successful in the court in opposing the Secretary's Order, the amount would be refunded. The dealers on the market immediately called a strike and ceased buying, which practically paralyzed demand. Some outside fatteners showed up on the market, however, and because of this condition attempted to purchase at prices materially below those prevailing the previous week. While the Stock Yard Company might have held out for an indefinite period and taken the loss, we could not do so and act in the interest of the shipper. The owners who had cattle on the Denver market that week stated that they lost at least $50,000 due to this action and importuned us to withdraw the charge, which we did the third day. This proposed charge and so-called strike affected our receipts the entire fall and we have reason to believe, because of the expectation of the dealers that it may some time in the future be applied, has caused them to go to the country more, filling orders there instead of on the market. It is our opinion, based on this and other experiences, with full knowledge of conditions in the West, that it would be impossible to collect such

1687 a charge and at the same time maintain our pres-

Trans.

ent volume and be an attractive market for producers of the West. Certainly after spending the large amount of money we have in building up a livestock market at Denver, it would be most foolish to endanger that investment in any way by disturbing our buying demand, by making it hard for them to be willing and active buyers, or by driving them off the market by making charges which are not effective at outside points. The management of the company believes that such action would be contrary to good business judgment and would bring much criticism from our producer patrons.

Management opposed charge on Trader.

Our competition is not alone that of the other central markets the Secretary has regulated. In fact, so far as feeder livestock is concerned on which a re-weigh charge might be applicable, the competition from other central markets is minor. The Secretary is not regulating the competition of direct buying, auction sales and so forth, but on the contrary, he has more or less approved direct buying of fat livestock and, by inference, of feeder livestock. I base that statement on his findings on direct marketing of hogs, Government Exhibit
1688 53. We feel there is an implied approval of the direct buying of other kinds of livestock by the findings he made with regard to hogs. It has also been the attitude of co-operative marketing agencies, which are in a manner supported by the Government, that they favored direct buying in some cases, particularly feeder cattle and sheep.

Secretary does not regulate direct buying.

1689 Whereupon Respondent's Exhibits 21, 22 and 23 were offered in evidence and the ruling thereon deferred until after cross-examination.

Respondent's Exhibits 21, 22 and 23 offered.

I have prepared for the information of the Secretary an exhibit showing what effect a 10 per cent and 20 per cent reduction in the rates of The Denver Union Stock Yard Company would have had on

Trans.

the earnings of that company during the past five years. These exhibits are now marked Respondent's Exhibit 24 for the year 1930, 25 for the year 1931, 26 for the year 1932, 27 for the year 1933 and 28 for the year 1934. These exhibits were prepared by me or by those directly under my supervision and control and in accordance with my instructions.

On July 28, 1931, as a result of the hearing in Docket 301, the Secretary ordered a 20% reduction in yardage rates and on the profit of feed. He also ordered a charge of substantially one-half yardage on shipments re-weighed on dealer transactions
1690 on the market. The rates in the last column are our present rates reduced 10%. We have added the one-half yardage charges on the actual shipments we might have re-weighed, based on the agreed figures as shown by Government Exhibit 43 and 43-A and Respondent's Exhibit 22. However, Exhibit 22 is based on figures shown in Government Exhibit 43 and 43-A and simply applies to the number of head shown on those exhibits, the rates ordered as a result of the 1930 hearing by the Secretary for re-weighs in 1931. The reduced rates were applied on all of the traffic actually coming to the Denver market for the five-year period 1930 to 1934, as it actually sold and paid yardage and purchased feed.

1691 In arriving at the rate base, the Secretary threw out the railroad tracks and other facilities producing additional income, and the income therefrom was also thrown out. These exhibits show that if the Secretary's rates in 1931 had been in effect for the 5 year period 1930 to 1934, they would have failed to produce the return then found reasonable by the Secretary by \$44,237.00 in 1930; \$71,000.00
920 in 1931; \$91,000.00 in 1932; \$86,000.00 in 1933; and \$26,000.00 in 1934.

Trans.

Summarizing: Had the rates the Secretary found reasonable as a result of the 1930 hearing been effective for the years 1930 to 1934, inclusive, during that five-year period The Denver Union Stock Yard would have been short $401,000.00, that is, it would have *earned $401,000.00 less than the* amount the Secretary stated was a fair and reasonable return. That is an average of $80,000.00 per year. Had the returns been reduced only 10% instead of 20% during that period, the shortage for the five-year period would have been $225,000.00, or an average of $45,000.00 per year. For the purpose of the record I may say here that when I re-
1696 ferred to the decision of the Secretary in 1931 I mean that decision which the Secretary made following the hearing of 1930. In this testimony I have given consideration to the throwouts of expenses made by the Secretary in the 1930 hearing. We have thrown out bond interest as an expense, this being about three-fourths of the Secretary's throwouts. No other expenses have been thrown out for the reason that a substantial part of the expense items thrown out by the Secretary included costs of operation of the Stock Show, carrying charges on that property, certain donations to the Community Chest, Chamber of Commerce and others, and the expense incident to the valuation of our property. I did not eliminate those items because the Court upheld these expenses in its decision of our prior case.

All throwouts of the Secretary aside from bond interest just about balanced our revenue from investments and the railroad property. There is also some revenue which would be eliminated, such
1697 as Stock Show rent, which we have not given consideration. The total income from railroad earnings during the five-year period was $52,733.93 and 921
from investments $50,952.17, or a total of $103,-

Trans.

686.10. Accepting the throwouts made by the Secretary, we would have been short over the five-year period, on a basis of the Secretary's rates and the Secretary's value, an amount of $297,000.00.

1698 That is, accepting the Secretary's finding that $254,000.00 approximately was a fair return for the property of The Denver Union Stock Yard Company used and useful in the handling of livestock in commerce at the time of the 1930 hearing, and accepting all of his throwouts from expenses, the returns provided by the Secretary would have lacked $297,000.00, or $59,000.00 per year over the five-year period of producing what he said and found they should and would produce.

We feel that this conclusion is supported by Government Exhibit 41-A. After elimination of all property the Government does not deem used and useful and its income and expense, the expense including the carrying costs of the Stock Show, vacant lands and other property not producing income, as well as other throwouts of expense, all of which were condemned by the court in the previous case, and a reduction in our annual depreciation of $15,000 per year, the government only found an average return for the five years of $256,961.24, or only $2,444 per year over what the Secretary said was fair and reasonable in 1930, at our present rates which he attempted to reduce. Non-deductions of donations alone would absorb this average. The approximate 20 per cent reduction ordered by the Secretary would have reduced our earnings $51,000 per year or, over the five-year period, $255,000.00. Not making the deductions in expense condemned by the court, our figures are $297,000.00.
922 The difference in depreciation of $15,000.00 per year over the five-year period totals $75,000.00. We feel

9 our estimate of the revenue we would have received under the Secretary's Order is most conservative.

Respondent's Exhibits 24-28 offered.

Whereupon Respondent's Exhibits 24 to 28, inclusive, were offered in evidence and the ruling thereon deferred until after cross-examination.

The witness then discussed the effect of the NRA
0 in reducing hours of labor and increasing costs
and the fact that the company does not intend to
8 return to the 10-hour day. The Secretary now in
his final order has made an allowance for increased wages, hence this discussion is now deemed immaterial and is omitted from the abstract.

Cost of rate hearings.

9 Now with respect to the costs of these rate investigations and hearings, from March 1, 1924, to December 31, 1933, The Denver Union Stock Yard Company had expended a total of $62,166.93 in work incident to valuing the property, presenting testimony, preparation of exhibits and other work caused by valuation proceedings, this being an average of $6,216 per year, or $518 per month. We start with March 1, 1924, because in 1924, or a few months prior thereto, the Packers and Stockyards Administration set down for hearing and investigation the rates and charges of The Denver Union Stock Yard Company. We went ahead and prepared for this hearing, having our property valued in various respects. The hearing was later called off, the case not being heard. However, due to the case being set down for hearing we thought it necessary to go ahead and prepare for it.

Take, for instance, Mr. Eppich's testimony of the valuation of the land which he made in 1925, that
was a part of the expenditures occurring in that
10 period on account of that proposed hearing. This
$518.00 per month does not include office help or
the cost of preparing statistical data. Inasmuch

Trans.

as this will be a continuing expense from now on, the same as commercial litigation by railroads before the Interstate Commerce Commission, which that Commission allows as proper expense, an expense allowance *of at least* $500.00 per month should be allowed us to take care of this work in determining the fair and reasonable rates or in testing the reasonableness of our present rates. In the future we plan on keeping information necessary for rate investigations regarding our valuation and rates right up to date at all times, which will require at least one additional man and numerous accounting forms and statements. At the rate of $500.00 per month it will require probably five years to pay our cost of the present hearing. In the meantime, we may have others.

1710 to 1713 The witness then discussed in detail the recommendations of Government witness Christensen to eliminate from the rate base those portions of the Exchange Building occupied by government offices, including the postoffice, and by the telegraph companies, serum companies, etc. (see abstract pages 17-18). This testimony is omitted here because such recommendations were not embodied by the secretary in his final order.

Government land values deemed inadequate.

1714 Now with respect to Government Land Appraiser Zelinski's appraisal of the Yard Company's land. I have been at the stockyards for twenty years and am familiar with that territory, and as Assistant General Manager I have examined the books and records of the Company with regard to the prices paid for portions of the Yard Company's properties. I am making the following statement in order to point out wherein the Government Land Appraiser apparently has not given weight to surrounding the adjoining values of other lands in the stockyards area, and to conditions which affect land values based on his testimony. In this testimony,

witness Zelinski stated that land values were affected by proximity to highways and railroads, by freedom from floods, by improvements which had been made in river channels, by availability of fire protection, city water and other advantages that go with being within the City limits of a city such as Denver, by the nearness of the land to the center of industry in the stockyards area and so forth.
1715 I do not pose as a real estate expert in the accepted definition, but I have for many years closely watched and kept track of development in the stockyards district, with the land valuation in that section, and I feel I am competent to testify as to the improvements which have been made in the past 20 years in various ways in the stockyards district, and to compare the lands of The Denver Union Stock Yard Company under discussion with other land in that section which may have been used to determine the value of the land of the Stock Yard Company. I feel that I can also point out values of our land determined in various ways in the past and show wherein the Government Land Appraiser has not apparently given due consideration to those values. I have repeatedly been over the land which will be discussed in this testimony and am familiar with the contracts, sales, developments or other matters which I feel create or affect values.

At this point Respondent's Exhibits 33, 34 and 35 were marked for identification.

(Witness continuing). Exhibit 33 is an airplane photograph of the yard taken in 1933 which has been colored and marked in various ways, as will later be explained.

1716 Exhibit 34 is a map of the Denver Union Stock Yard area showing the location of the old river channel, the location of the present river channel

Trans.

and the amount of filling necessary to fill the old channel and low-lying land adjacent to the channel up to the present level.

Exhibit 35 is a statement showing actual cash expenditures and land grants to the City and County of Denver in order to develop highways serving the stockyards and the stockyards district.

Respondent's Exhibits 33, 34 and 35 described.

Returning to Respondent's Exhibit 33, it is an airplane photograph of the Denver Stockyards taken in January, 1933, looking north, showing that portion of the property of The Denver Union Stock Yard Company north of the Colorado and Southern right-of-way, west of the Burlington right-of-way and east of the Platte River, together with a substantial area of land north of the stockyards. Exhibit 34 is a map showing the location of the old Platte River channel through Zone 4, the present Platte River channel, the average fill of the old river channel to the top of the bank and the average fill of this and adjoining land to the present ground level. Exhibit 35 is a statement showing land granted to the City in various parts of the yard and the cost thereof in order to make our property more accessible and otherwise develop it. All of these exhibits will be referred to and explained in more detail later.

1717 The fact that on Respondent's Exhibit 33 I have not colored the Stadium property, that is to say, the horse and mule division on Lafayette Street and Zone 9, is not meant to waive in any manner the claim that it is our property and used and useful. This exhibit has nothing to do with used and useful property. As a matter of fact I have colored certain lands to indicate that they do not belong to the Stock Yard Company. The only purpose of this exhibit is to illustrate my testimony as it

1718 develops. Prior to the year 1917 the railroads, in

Trans.

using railroad tracks of The Denver Union Stock Yard Company only paid the maintenance thereon and did not pay any return on the investment in the tracks or on the land they occupied. Negotiations were started to correct this situation. A series of conferences with the executive heads of the railroads finally resulted in an agreement whereby the carriers using these railroad tracks agreed to pay 6% interest, maintenance and taxes on their value. At that time 4.26 acres were occupied by railroad tracks allowing for proper clearances. Of this, 2.17 acres were located in Zone 4. During these conferences a composite value of $8,772.00 per acre was arrived at. There had also been a material amount of filling done on all of the tracks. Railroad engineers, after going over the matter carefully, allowed 22,500 cubic yards of filling at $1 per yard on the 2.17 acres of land occupied by the tracks in Zone 4, and 7,500 yards at the same price on the 2.09 acres located in other zones. This, therefore, gives us a value on the land occupied by tracks in Zone 4, which extends from the C. & S. right-of-way at the southerly end of our property to the northern end, of $8,772.00 per acre, plus $10,369.00 per acre filling, or a total of $19,141.00 per acre. For the land in other zones, the grading expenses of 7,500 yards at $1 per yard on 2.09 acres, figures $3,588.00 for grading, plus $8,772.00 for value, or a total of $12,360.00 per acre. The railroad tracks in these other zones extend from Zone 6 on the south through the heart of our yard to Zone 3 on the north. Obviously, in arriving at

Valuations agreed to by Railroads are indicative.

1719 this value which was a composite, a greater value was allowed in the other zones than in Zone 4, which would probably reverse these figures and give a value in Zone 4 of about $12,000 per acre, and in the other zones about $19,000. These values were arrived at under arms-length bargaining and

Trans.

with a desire on the part of the carriers to pay nothing at all. The filling expense was arrived at after careful checking by railroad engineers. This contract with the railroads, while subject to cancellation, as most such contracts are by either party, has now been running for 17 years. There is no prospect of its being cancelled, no indication that there is any desire on the part of the railroads to cancel it, nor, apparently, any possibility that it will not be effective for many years to come.

Value fixed by arms length bargaining.

Respondent's Exhibit No. 34 (the map) shows the filling that has taken place in Zone 4. All of the colored area is the property of The Denver Union Stock Yard Company. The tracks on which 22,500 yards of fill was allowed are immediately to the right of this colored area. They may also be seen in the photograph, Exhibit 33, they being the tracks in the center left hand part of the picture. Exhibit No. 34 shows the total area filled, not including filling on account of railroad tracks prior to this development, this area being 9.95 acres; the amount of the fill, which was a total of 127,852 cubic yards; and the fill per acre, or 12,850 cubic yards. The railroads found the cost of filling ground in this zone to be $1 per cubic yard. Approximately the same cost would obtain today as all of the filling material would have to be moved from some distant point, there being no
1720 filling material in that particular area. The old river channel was filled from three to eight feet in order to bring it level with adjoining river banks, and then all of it was filled seven feet above this in order to bring it level with the stockyards area. The Government Appraiser has found a value for the 18.722 acres in Zone 4 of $2,500 per acre, or $46,805. Our appraiser found a value of 16.382 acres of $12,000 per acre, and on 2.34 acres a value of $10,000 per acre, or a total of $129,984. The

Trans.

filling cost alone on this 13 acres of land, with no consideration given to the value of the land itself, the way it is served by railroads and highways, the fact that it adjoins the Armour and Swift plants, and other factors that create value, would be $150,-352, or over three times the value placed upon it by the Government Appraiser. We have previously shown the use of this land and how it has been developed under testimony concerning land used and useful.

On Respondent's Exhibit No. 33 (the photograph) we have tinted in red the area of the C. B. & Q. right-of-way on which the Interstate Commerce Commission recently placed a value of 25 cents per sq. ft., or $10,890.00 per acre. This is just the raw value of the land, filling and grading being in addition thereto. In 1917 the I.C.C. placed a value on this zone of 70 cents per sq. ft., or $30,000 per acre. I.C.C. values north of this zone decrease; however, none of these values has been accepted by the C. B. & Q., although the recapture provision in the act has been repealed and there is now not the same necessity to contest I.C.C. values. **I C C valuation of C B & Q indicates higher values.**

The portion of Exhibit 33 tinted in purple is property we sold to Armour & Company last month, May, 1935, under an option made over 10 years ago. This area contains .475 acre of land and 1,555 feet of track. The basis of the original option was the same as our contract with the railroads, that is, $8,772.00 per acre for land and $3.17 per foot for the track, and not as outlined on page 275 of Government Exhibit 23, which showed a land value of either $9,176.00 or $5,564.00 per acre, depending on the value of the tracks. This option compelled us to sell but did not compel Armour to buy. The option was given when Armour & Company owned one-half interest in the stockyards and could com- **Recent Armour Sale indicates higher values.**

Trans.

pel the stockyards management to option at practically any price. We would have preferred not to sell at this time, but had no choice. Armour & Company certainly thought this land worth this amount, that is, $8,772.00 per acre, or they would not have exercised their option.

Zone 1 Undervalued.

Zone 1 in the main stockyards area is tinted in orange on Exhibit 33. It will be noted we have at one end of this zone property recently valued by the Interstate Commerce Commission at $10,890.00 per acre and at the other end a recent compelled sale at $8,772.00 per acre. We have leased to the railroads lands adjoining this area its full length at from $12,000 to $19,000 per acre as previously explained. The Government value on this zone is $8,500.00, although the Government witness states that it is the center of industry at the stockyards and, therefore, more valuable than the two values or sales we have mentioned. Our appraisers have
1722 found a value of $17,500.00 per acre on 34.934 acres and $15,000.00 per acre on 36 acres.

Zone 2.

Zone 2 adjoins Zone 1 on the north, being tinted in pink. It is bounded on the northerly side by Race Court, an improved street, on the east side of the C. B. & Q. right-of-way with track connections if desired, and on the west by Franklin Street and the tracks of the Northwestern Terminal Railway, and by our tracks. At the southwesterly corner it adjoins the land recently sold to Armour & Company for $8,772.00 per acre. It is served on two sides by highways and by all railroads entering Denver, the same as our other lands. Railroads pay rental on tracks through this area on a basis of $8,772.00 per acre, plus grading. On this zone containing 23.19 acres, the Government Appraiser found a value of $5,000 per acre and our appraisers $15,000 per acre. In 1930 the Government Ap-

Trans.

praiser found a value of $8,000 per acre. This Government Appraiser was a local man of 30 years' experience.

Zone 3 joins Zone 2 on the north, being separated from that zone by Race Court. This area containing 19.825 acres is tinted in brown. The Government value at this time is $3,500 per acre,—our value $8,000 per acre. The land cost $3,000 per acre in 1916, at which time it was not served by the railroad facilities, was not connected with the terminal railway of the Stock Yard Company or to any highway except Franklin Street on one corner. It is now served by the joint railroad tracks of the Stock Yard Company running into it, and by Race Court on its longest side. Prior to purchase it was rough, uneven and undeveloped. Today it is comparatively level and ready for stockyards use with minor grading. The railroads pay on a value of $8,772.00 per acre for tracks on land in this zone. Zone 3.

1723 Exhibit No. 35 shows the cost of providing Race Court as a highway, these being Items 4, 8 and 9. 1.78 acres of land was granted at $3,000 per acre, or a total cost of $5,340. Item 8, the cost of the Race Court subway, is $4,227, and Item 9, excavating for the Race Court subway, is $6,887, or a total of $16,454. The original cost of the 30 acres was $90,000. Adding $16,454 to make the zone accessible as it is at present, gives a total of $106,454. We lost 1.78 acres in the transaction, leaving 28.22 acres, or, in other words, the usable amount of the tract cost us $3,675 per acre 17 years ago. We do not deny that land values can go down, but we do insist that just the opposite has been the experience of Denver values, and of land values in the stockyards district the past 17 years. Since 1917 the Denver market has materially expanded, additional packing plants have been built, receipts

Cost to Company of Race Court.

Trans.

have been materially increased, and the population of the city has increased over 50,000 people. The stockyards proper in 1917 stopped at Franklin Street, or approximately 1,600 feet from the Race Court subway. Today pens have been extended north to this subway.

Q. Now, I want to stop right there, Mr. Pexton, and ask whether or not it isn't a fact that all of the land which impliedly, at least was recommended by Mr. Christensen as used and useful is not now fully occupied by stockyards facilities.

A. Yes, it is, with possibly one or two minor exceptions, very narrow parcels of land adjoining fences or something like that.

Interspersed parcels.

1724 Q. Well, now, these were all pointed out to Mr. Christensen. He named one that was along the east side of Zone 2. In your opinion, is that of such size as could be used for the expansion of the cattle division?

A. No, sir, it could not. We are saving that particular land there to enlarge our cattle drive-out chute, to permit access with fire wagons to that side of the yard, to build another branding chute or move it down there if and when it is necessary. It would not permit any expansion of cattle pens.

(Witness continuing). Further examples are parcels designated as 161 and 147 on Government Exhibit 8.

1725 Parcel 147 is a very small, long, triangular piece containing about 7,000 square feet and would accord practically no land for expansion. Parcel 161 is removed from the yards and is so located that it would be impossible to build any pens upon it. In reality it is land left over in the development of the yards. We are now using it at this time for

Trans.

the parking of patrons' trucks and to some extent parking for Swift & Company. If it had no use whatever it should still be in the rate base because in the development of a stockyards or any other industry, or even in the building of a house, the builder will find certain parts that are not usable and this is one of the parts that we now find not 100% usable in the development of our stockyards. It would have been impossible in the original purchase not to have purchased this particular piece of ground because it is practically in the center of our property.

So, too, Mr. Christensen mentioned another strip of land west of the main center alley or yard and adjoining the stockyards trackage; it is east of hay barn 4 and running north of the shop and
1726 lunch room. That area is now used at this time as a material yard and as a roadway taking manure to the manure dump on Zone 3 and in moving hay to and from the cars. We might at some time be able to build some chutes in that particular parcel, but it would not be feasible as land for expansion to yard cattle in. I would like to add that Mr. Christensen also mentioned a small parcel of ground adjoining the Burlington chutes and east of the cattle area immediately north of the Exchange Building, that being outlined in purple on Government Exhibit 8. That area is not suitable for expansion for the cattle yard proper. The area numbered 157 on Government Exhibit was left there
1727 purposely in the building of the yards so that our employees might have a passageway going to and from the chute house to the Burlington dock and in order that it would not be necessary for them to walk on the Burlington switch track; it was purposely left as a safety feature in order that someone might not be killed by switch engines moving over those tracks. The area is only six to

Trans.

eight feet on our property, and while we might have a few pens that narrow in the drive-in division, the area in question certainly would not be ground for expansion in any sense in the cattle yard. By "drive-in pens" I mean those pens used simply to hold one or two head until they are moved to the sales pens.

No expansion ground allowed.

To shorten this whole thing, I might say, in my opinion, Mr. Christensen has allowed no room whatever for expansion in any department in any way.

Local Beef and Mutton tract.

1728 Returning to Exhibit 33 in the upper part of that exhibit is an area tinted dark green. This is 2.757 acres of land on which is the plant of the Local Beef and Mutton Company. In 1920 this company purchased from the Fairmount Cemetery Association 1.34 acres of this land, and on October 18, 1922, 1.417 acres. The consideration in each case was $2,500 per acre. At the time of purchase, this land was uneven and not graded. This cemetery association is the same company from which we purchased the 30-acre tract in 1916.

The City limits end at the Franklin Street bridge over the Platte River at the point marked X on this exhibit. This packing plant is in Adams County and does not receive fire protection, sewerage, water, paved streets and other advantages that go with property located within the City limits of the City and County of Denver. The changes in the Platte River channel and the flood protection developments stop at this bridge on Franklin Street. The land of this company, costing $2,500 per acre, is eight to nine feet lower than the land immediately across the river in Zone 3. In the August, 1933, flood all of the area outlined in green on this exhibit was under water, while the property immediately across the river in Zone 3, as well as all other Stock Yard Company land, remained above

flood waters and was in no way damaged by this flood, and it was not necessary for us to make any expenditure either for flood protection or for re-
729 building after the flood. At the point marked A in Zone 3 the elevation above sea level is 5,143.7 feet. The low water level at the point marked B is 5,133.5 feet, point A being 10.2 feet above low water. The elevation at the point marked C, the entrance to the Local Beef & Mutton plant over the tracks of the Northwestern Terminal Railway, is 5,135.8 feet. The company office is 5,136 feet at the point marked D. The elevation of the land just north of the plant at the point marked E is 5,134.3 feet. The high water mark in the August, 1933, flood was 5,137.1, or, in other words, during this flood all of this property was under water, with material damage, while the land in Zone 3 was still 6.6 feet above the high water mark. In the other area, outlined in green, material damage was done. The railroad tracks shown in the photograph containing several cars, running from point M to N, was washed out, cars turned over on their sides, and has not been rebuilt. The houses both north and south of this railroad, were under one to two feet of water. The Local Beef & Mutton land, costing $2,500 per acre, is in no way comparable to the Race Court land, either in elevation above the river, freedom from floods, river channel improvements, railroad service, highway service, fire protection, city water service, nearness to the center of industry or in any of the elements that create value. Livestock for this plant must be driven down the open highway across the Franklin Street bridge. With this actual sale and all of these conditions, witness Zelinski has placed a value on Zone 3 of only $1,000 per acre more than this low lying, subject to flood, land. To make this land
30 comparable to the Race Court land in just one

Trans.

phase would require filling to the amount of 8 feet, or 12,833 cubic yards per acre, at a cost of approximately $12,000 per acre. To make it comparable from a flood-protection standpoint would require rebuilding of the railroad and highway bridges across Franklin Street, and a great deal of grading and changing of the Platte River channel at this point, at an expense we cannot estimate. We submit the Local Beef & Mutton land is in no way comparable to Zone 3, yet the owners of the land were willing to pay for it 71% as much as the Government Appraiser has placed on the Zone 3 land.

1731 On the morning of May 31, 1935, five days before this hearing opened, due to a heavy rain at the headwaters of Cherry Creek, a majority of the land of the Local Beef & Mutton plant was again under water. Several pilings were taken out of the Franklin Street bridge by this water and, also, a part of the N. W. Terminal grade north of their bridge. All of the land of the Local Beef & Mutton Company was under water with the exception of the main plant, which is on higher ground. The high water mark on the river bank on Zone 3, just opposite this tract, was 5,133.7 feet above sea level, or five feet below the level of this land. The high water mark west of the Franklin Street bridge was 5,140 feet. No stockyards property was damaged in any way.

Zone 4 undervalued.

This photograph will also serve to emphasize other low values the Government Appraiser has placed, in our opinion. The northerly portion of Zone 4 is tinted in blue on the photograph. Since this picture was taken it has practically all been filled in as a comparison with the photograph, Respondent's Exhibit 1, shows. Its present use and necessity in stockyards operation was described in other testimony. On this land adjoining the Armour plant and directly across from the land we sold

Trans.

last month for $8,772 per acre, the Government Appraiser has placed a value of $2,500 per acre, or the same as the Local Beef & Mutton paid for their land, in 1920 and 1922, subject to flood and outside of the City limits.

1732 For the information of the Secretary, the Hanks feedlot is visible in the extreme upper left hand part of Respondent's Exhibit 33.

More or less the same conditions are true about the rest of our property, that is, the Government values are, in our opinion, unreasonably low and are apparently based upon some distant and not comparable sale or offer. The land in Zones 6 and 7 cost us $4,375 per acre in 1888, at a time when Denver's population was only 106,713. At that time 46th Avenue, which now separates the two zones, had not been opened. The Swift Packing plant near these zones did not exist, and certainly the Denver livestock market had not developed to its present state either in outlet, demand or facilities. The present Government value is $4,000.00 per acre on Zone 6, and $3,000.00 per acre on Zone 7. We gave to the City in 1907 and 1913, 2.298 acres of land to open 46th Avenue, these being Items 2 and 3 on Exhibit 35. The first cost of this 2.29 acres was $10,050, and the cost plus carrying charges of six per cent simple interest to the date given is $22,155. The original tract was 11.43 acres, costing $50,000 for the land. We gave to the city 2.298 acres, leaving a net acreage of 9.15 acres at a net cost of $50,050, or $6,550 per acre. The Government value of $4,000 per acre is 61 per cent of this amount, and the value of $3,000 per acre is 46 per cent of our cost.

Respondent's Exhibits 31, 32, 33, 34 and 35 were thereupon offered in evidence and ruling thereon deferred until after cross-examination. **Respondent's Exhibits 31, 32, 33, 34 & 35 offered.**

Trans.

1733 At this point the photographs being offered into evidence were qualified by the witness as to their accuracy. It was admitted by the witness that airplane photographs to some extent distort the objects photographed in that they enlarge that portion of the photograph near the camera in comparison with more distant portions. The witness stated that, in his opinion, the photographs taken together gave the person viewing them an accurate view of the layout of the Denver yards, which is all that they were intended to give. Witness stated that it was not intended that measurements should be taken from these airplane photographs.

1734 Mr. Miles then waived the objection that the photographs had not been properly qualified, reserving, however, the objection relative to their general admissibility.

1735 MR. BOSWORTH (Continuing): Now, Mr. Pexton, Mr. Zelinski also testified in connection with his structural appraisal to the use of company labor and what savings might be made in that manner in reproduction new cost. Have you made an examination of the Stock Yard Company records and have you a statement to make with regard to the rates for labor used by the Government in their Exhibit 31, which I believe is the company labor exhibit, is it not, Mr. Zelinski?

MR. ZELINSKI: 31, that is correct.

Govt. figures on labor costs below current scale.

1736 (Witness continuing). Government Exhibit 37 shows the labor rates used in figuring the reproduction cost of the property of The Denver Union Stock Yard Company using company labor for a portion of the work, as shown by Exhibit No. 31. It shows a 30 cent rate for common labor employed by the Stock Yard Company. At this time we have 106 employees in the yard proper. Only two of these are paid the 30 cents rate; all of the remain-

Trans.

ing employees being paid higher rates. 30 cents per hour is our starting rate for new, inexperienced men on rough work. As soon as they get some experience, their hourly rate is increased. Respondent's Exhibit 29 shows the average hourly cost of expense on account of the NRA to be 45.7 cents per hour. Use of our actual common labor cost on Government Exhibit No. 31 would materially change the reproduction cost as shown by this exhibit, for which reason, in our opinion, those figures should not be used. Government Exhibit 28, based on contract labor, should be used.

In all of our major construction the work, with few exceptions, has been performed under contract, it being our experience that it is more economical to handle in this manner. The employees of these contractors are paid the union scale, these rates being used in ascertaining the reproduction cost shown in Government Exhibit 28. Our employees are not unionized. As a general rule, unionized labor in Denver will not work with non-union men such as we employ. When we wish to do work around or on some construction work we have contracted, we generally must wait until the contract portion is finished and these men are off the job.
1737 Such procedure, in the event of full reconstruction, would, in our opinion, materially delay the construction period, and any savings in labor would be more than offset by the extended construction period. The Government allowed a construction period of one year, figuring 7% interest for half that period, or six months, on $3,015,000, or $101,964. An extension of the reconstruction period for only a short time would more than offset the saving of approximately $40,000 as shown by Government Exhibit No. 32.

10-year period used on I. C. C. expense.

Now with respect to amortizing the I.C.C. hearings expense over a ten year period, on page 3 of

Trans.

Government Exhibit No. 41 the Government Auditor shows we have charged off a total of $19,684.96 during the past five years on account of rate hearings before the Interstate Commerce Commission. He readjusts this expense on a 10-year basis, charging off $1,968.50 per year. We do not believe it desirable or good business to carry such expenses in our asset account after the money has been spent, pending charge-offs over a 10-year period, for the reason that we continually have cases before the Commission in order to protect transportation charges to and through our market, all of which is
1738 in the interest of the producer and patron. The larger amount of this $19,684 was on account of a discrimination case brought against us by the Missouri River markets, which, if we lost, meant about $50 per car less in the price livestock shippers would receive on shipments sold at Denver. The case was successfully defended. It did not, however, definitely approve the so-called transit or sale in transit arrangement of livestock at Denver, but only found it non-discriminatory, and we may be again called upon to defend it under Section I of the Interstate Commerce Act in the future. At this time we have pending before the Interstate Commerce Commission a case involving west-bound meat rates to the Pacific Coast and east-bound livestock rates to the Atlantic Coast, both of which will react to the benefit of our patrons if we are successful. We also expect to have an east-bound meat case some time in the near future. It is not good business to hold these expense items in our account and they should be charged off when they are incurred. That is the opinion of the management and the Board of Directors as far as I know it.

Govt. "throw out" schedule.

1739 At this point I should like to comment on Government Exhibit 41 and in particular that part of
940 the Exhibit which contains what might be describ-

Trans.

ed as the Government's throw-out schedule. I have examined the various items of expense thrown out by the Government and I am familiar with all of them.

In Government Exhibit 41 the Government makes certain deductions from income, expense and depreciation on account of property they declare not used and useful. We do not agree with these eliminations in any way or with the average income of $256,961.24 they arrive at on sheet 1 of Exhibit 41-A. As shown previously, in our opinion all property used in connection with the Stock Show is used and useful and expense eliminations on page 3 of Exhibit 41 are not proper.

Donations eliminated.

1740 Pages 4 to 7, inclusive, of Exhibit 41, cover deductions made from our expense account of dues, donations and subscriptions. We believe that these expenses are entirely proper, being made for the good of the market and the patron on the market. We shall take the year 1934 covering each of the eliminated items, explaining why they were made and how they are necessary for the good of the patron in the operation of the Denver market.

Community Chest serves Stock Yard district.

The first item eliminated is a subscription of $1,000 to the Denver Community Chest, this being the consolidated charity and relief organization for the City and County of Denver. The Denver Community Chest takes care of general charity work throughout the City, but its agencies spend a substantial amount of its income in and around the Stock Yards district. Nurses and others representing organizations of the Chest call on and are of assistance to our employees or ex-employees and generally contribute to their general welfare. Some charity is necessary in every City and lack of it results in a more disorderly and unsafe community. It is our opinion that the donations of the Stock

Trans.

Yard Company in the Stock Yards district would total much more without the Chest. As is the case in most cities, the poorer districts receive much more from the Chest than they contribute, whereas the better residence districts contribute more than they receive. This is the case with Denver. Our contributions to the Chest result in charity cases being more efficiently investigated and we are assured that our donations reach those in need in a much larger percentage than if we attempted to make them direct in large volume.

Chamber of Commerce aids livestock industry.

1741 The next item eliminated is a subscription of $240.00 to the Denver Chamber of Commerce. This Chamber of Commerce has been of value to us in assisting in freight rate cases, in assisting in the building of the Dotsero Cut-off, in building up the City and County of Denver, thereby increasing the outlet for meat products and in contributing to the general welfare of this locality. They have an agricultural department which has been of assistance in connection with livestock production. They are active in bringing tourists to Colorado, which increases meat consumption throughout the territory. Our subscription to them is quite normal considering the fact that the Stock Yards is the largest industry in Denver. In our opinion, the patron of the market receives a benefit much larger than the amount of our subscription of $20 per month.

The donation to the U. S. Chamber of Commerce next eliminated was $50 in 1934. The work of the U. S. Chamber of Commerce is familiar to all concerned, it being active in matters affecting and benefiting the general welfare of all people, including the livestock industry.

The next item eliminated is $15 to the Junior Chamber of Commerce. More or less the same explanation applies to this as to the Denver Chamber of Commerce.

Trans.

The next item is $395.50 on account of tickets and boxes to the National Western Stock Show. We give tickets to the Stock Show to all of our employees and their families, this constituting about $300, or the major portion of this item. The remainder covers tickets purchased for patrons of the Denver market here during Stock Show with their livestock. No tickets are given to exhibitors, but only to regular shippers, and this amount is nominal. It is, in fact, solicitation of business.
1742 In our opinion, this expense is proper for the patron, it being spent for the benefit of our own employees and for the benefit of the patron himself.

American Stockyards Association.

The next item is $832.56 to the American Stock Yards Association, an organization of all stockyards. It was organized in compliance with the provisions of the NRA in order to work out a stockyards code at the direction of the President of the United States through his authorized representatives. Under the requirements of the NRA, stockyards companies were required to organize a group, as individual companies would not be recognized. Had the National Recovery Act not been passed, the Association would not have organized. The mere fact that the Act was declared unconstitutional should not remove from our expense an item forced upon us by the Government. Undoubtedly some similar organization will be necessary in the future. This association is still in existence.

Church donations.

The next item eliminated is $115 donated to various churches around the Stock Yards district attended by our employees. We do not donate to churches outside of this district. We believe the presence of these churches in the Stock Yards district has a beneficial effect upon our employees and, through them, upon our patrons and should, therefore, be allowed.

Trans.

The next item is $75 donated to the United Health Appeal Hospital, a Jewish organization taking charity subjects of all creeds and kinds. We believe this work is for the general good of our territory and that it may properly be supported. We have numerous Jewish patrons.

1743 The next item is $10 to the Volunteers of America, this being a charity organization similar to the Salvation Army.

The next item is $5 to the Veteran Volunteer Firemen, an organization interested in fire protection in Denver.

The next item is $15, which is a donation to the Firemen's Pension Fund and gives a better contact with city firemen, and, for this reason we feel, better fire protection.

Traffic Clubs.

The next two items are $18 each to the Denver Traffic Club and the Denver Commercial Traffic Club, the first being a traffic club including railroad men, and the second being a similar club not including railroad men. Membership is held in the former club in order to give better contact with the railroad men, thereby enabling us to improve railroad service into Denver for patrons of the Denver market, and also switching service after arrival at Denver. Contacts are formed at this club which makes it much easier to obtain this improved service for the benefit of our patrons. Membership is held in the Commercial Traffic Club mostly for educational purposes, it being strictly an educational organization in order to become better informed on rate matters and their presentation before the Interstate Commerce Commission, and through contacts formed in the club, to be able to consult and confer with other members who are informed on Commission procedures.

Trans.

1744 The next item eliminated is a $70 contribution to the brand inspectors on the Denver market. We frequently call upon these inspectors to sort cattle which have been mixed, this being done by brand. Claims are eliminated or reduced through prompt sorting of shipments we have mixed and prompt movement out of the yards. We call upon them at all times of the day and night. No remuneration is given them for this work except the Christmas present which amounts to $10 each. We cannot insist upon this work they do without remuneration and we feel the expenditure saves us a great deal more in stockyards operation than the amount involved. We can hire them outright to do this work for us but it will cost more to do so. **Brand Inspectors.**

The next item eliminated is $95.53 on account of dues of The Denver Livestock Exchange on a membership of The Denver Union Stock Yard Company in this organization held in the name of the president and general manager. It is felt that in the interest of the patron and to have a voice in the affairs of this organization, The Denver Union Stock Yard Compay should have this membership. By having the membership, we can attend their meetings, make suggestions for the good of the service, start advertising programs, start meat consumption programs and otherwise contribute to the general welfare of our patrons. Without this membership we could not attend these meetings or have any voice in their actions, which we believe would prove detrimental to our patrons and to the property of the company. It is just as important for us to be identified with the Exchange in this way as for the lawyer or doctor to be a member of his respective associations or the railroads to be members of associations for their common good. **Denver Livestock Exchange dues.**

Trans.

Policemen's Pension Fund.

1745 The next elimination is $50 donated to the Policemen's Protective Association, this being the pension organization of policemen. We frequently call on a policeman to assist in various ways around the yards, particularly in the protection of our own or our patron's property. We ask them to watch automobiles parked by patrons if thefts are going on. We do not mean that protection would not be accorded if the donation were not made, but we do know their spirit of co-operation is better than if the donation were not made. In the event of trouble in or around the stockyards it would be essential that we have ample and proper police protection for the good of the market and the patron. We are sure that because of this donation the protection our patron would receive would be in much better spirit than would otherwise obtain.

Miscellaneous Charitable Gifts.

The next three items eliminated are a $10 donation to the Old Folks Home, $1 for Christmas tuberculosis seals and $5 to the Rescue Mission, all of which we believe react to the benefit of our patrons.

The next item is $11 to the Church Messenger, which is an advertisement which should be allowed.

The next is $10 to the Joint Labor Day Committee, this donation being made at the behest of the Labor Day Committee to pay honor to labor in keeping with the spirit which caused our National Government to set aside one day of the year as a legal holiday upon which occasion the nation would pay honor to labor.

Denver Tourist Bureau.

The next item is $100 to the Denver Tourist Bureau. The Denver Tourist Bureau generally advertises Colorado, bringing tourists to this section who contribute to the general welfare and materially increase the consumption of meats in our territory, all of which is to the benefit of our patrons.

Trans.

1746 The next item is $10, for advertising in the annual program of the Gentlemen's Riding and Driving Club, an organization identified with the livestock industry insofar as it has for its purposes largely the promotion of the best interests of the horse business of this community.

The next item is $100 donated to the Colorado Woman's College, this being a Denver school educating girls, and largely dependent upon popular subscription. We have felt it was of advantage to the children of our employees who might not otherwise be able to secure a higher education.

The next item eliminated is $25 to the International Veterinary Congress. This congress is one of veterinaries from all over the country conferring for the good of the livestock industry and one which is supported by the Bureau of Animal Industry of the U. S. Department of Agriculture. We understand this particular conference was with reference to cleaning up cattle tuberculosis in the West so that States might be accredited and, thereby, find a better outlet into the Corn Belt. We feel the donation was well worth while and that it was in the interest of our patrons. Veterinary Congress.

The next item is $25 for an advertisement in the Police and Sheriff's Association Journal. We felt the advertisement justified and that it would have good results, otherwise it would not have been taken.

1747 The next item eliminated is a $5 advertisement in the Western Legionaire, which circulates all through the West, including livestock producers.

The next item is a $5 donation to the Letter Carriers. There is a postoffice in the Exchange Building and people renting space in that build-

Trans.

ing desire good service. We felt this donation would create a better spirit and would be of assistance in providing better service.

The next item is $11 to the National Federation of Federal Employees, this being for tickets for their annual ball. We feel this helps to promote good relations with the various Government departments represented at the Stockyards, particularly with the Bureau of Animal Industry and the Market News Service, and that it is to the interests of all concerned, including the patrons of our market, to do this.

The next item is a $5 donation to the American Legion, membership of which includes many livestock producers.

The next is a $5 ad in the program of the Holy Name Basketball League, which, we believe, is justified.

The next is a $2.50 donation to the Guldman Community Center, an organization somewhat similar to the Salvation Army.

The next item eliminated is $18 for tickets to the President's Ball, this being a more or less national movement. We did not feel that we had much choice in this donation. Certainly, had we refused this modest donation, we would have run the risk of offending powerful influences.

Total dues, donations subscriptions 3/10 of 1% of gross income.

1748 This list includes all of the donations made by the Stock Yard Company in 1934, totaling $3,823.84. The Government has allowed $233.25 and eliminated $3,600.59. The total donations are only three-tenths of one per cent of our gross income. We endeavor to keep it as small as possible, making only donations which, in our opinion, are absolutely necessary to maintain the standing of the company in the community. We have been criticized for

Trans.

being too close in these matters. The Government voices no criticism whatever that the company has been extravagant in this matter. We know it has not. Many industries in Denver donate up to $5,000 annually to the Community Chest. The Stock Yard Company, although the largest industry in Denver in *volume of* business handled or in money transactions, only donates about one-fifth of this amount. We do not understand that the Interstate Commerce Commission criticizes railroads for reasonable charity donations, or throws them out of the rate base.

.749 At this point Respondent's Exhibit 36, being Supplement 29 to U. P. Tariff 101-L, I. C. C. 4090, issued June 13, 1935, effective June 15, 1935, under Item 320, was offered into evidence. This exhibit was stated by the witness to establish the same rate as was effective in Denver at that time for Colorado common points and the markets west of the Missouri River with respect to sorting, consolidation and change of ownership of sheep, commonly called the sale in transit privilege.

750 (Witness continuing). I should like to cover more fully the hazards of the stockyards business and the conditions that confront us. Taking, for example, the Electric Light and Gas Company of Denver, anyone requiring this kind of service must go see this company. For that reason, their demand for service is more or less fixed. They are able to anticipate this for a considerable time in the future. They are able to provide either gas ar electricity in the form of a gas supply or generator or dynamos, growing gradually as the community develops. They are not confronted by the same things that the Stock Yard Company must face all the time. In the stockyards business we have the hazard of changed transportation conditions, direct buying, disease in livestock, drouth conditions, the Federal attitude on certain things, fluctuating

Hazards of business.

Trans.

prices, weather, auction sales, growth of railroad feed yards, growth of other markets, none of which are faced in the same way by a true public utility.

It might be possible, so far as we are concerned, that a market for livestock be established at Cheyenne, Laramie, Greeley, Pueblo, or at some other point. The establishment of an electric light and power company at any of these points would in no way affect the supply of electricity or the demand thereof at Denver. These auction sales that are
1751 springing up take a certain amount of business away from us. In other words, we must be continually on our toes to offset these conditions, to improve service, to make changes which will continue to bring the business to Denver, whereas these other true public utilities only need to make these changes or improvements as they see fit. I think
1752 we are in exactly the same condition as any manufacturing or service industry that continually meets hazards, changes in economic conditions and other things which affect their volume of business, and therefore their revenue.

Two or three of the hazards which I have mentioned are, in one sense, tied up together. Suppose an early snow storm comes in our mountains, as it has frequently done, and operates to drive out of the range a large number of range animals. That leads to congestion and it leads to shipments to other markets we might normally get under normal weather conditions. We have had snows as early as September 1st in the mountains which forced out a large volume of livestock and forced a part of this livestock to other markets. With normal weather conditions this livestock would have moved down gradually and it would have fed into the Denver market gradually. We also find that as prices go lower there is a reluctance on the part of the producer to take the prices bid at Denver, there be-

Trans.

1753 ing a feeling that any change will be an improvement, and he therefore continues on East, hoping the market will improve during the period he is en route.

All of the recent Government policies like the corn hog program, the Taylor Grazing Bill, permission to import Argentine meats, the Federal Farm Board, the things along that line have been contrary to, you might term it, a maintenance of stable business at Denver. Just what effect they will have on the livestock industry over a long period of years, no one can say, but we do know that they have had an immediate effect to create a greater hazard in the business and to reduce the volume of receipts the coming year or two.

This question of Argentine meats has been the subject of protest recently by practically every livestock organization that I know of. It is my information that meats can be produced profitably in the Argentine for very much less than the cost of production in the United States. Without a doubt if the bars are taken down and Argentine meat is permitted to come into this country, it will have a very adverse effect on the livestock industry in the West and therefore the stockyards serving that industry.

1754 HARRY W. FARR, a witness called by the Respondent, after being sworn, testified as follows:

My name is Harry W. Farr and my residence is Greeley, Colorado, and I am engaged in the livestock business, feeding sheep, cattle in wholesale production and the bean business. I feed about 35,000 lambs and a thousand cattle per year. I am not a producer. I am engaged entirely in the feeding side of the operation.

1755 I am a member of the Colorado and Nebraska Lamb Feeders Association and on the executive

Trans.

committee, and president of the Weld County Lamb Feeders Association and a member of the American Livestock Association; also the National Wool Growers, Salt Lake City.

I ship my lambs and cattle to the Denver market in part and to the other markets also. At times I sell direct but not as a rule. I buy the feeders on the range or on the Denver market and fatten them.

I have been familiar with the Denver market since 1907. I am also familiar with the Livestock Show which is held in Denver and have been so since
1756 1907. I have attended every year except one.

Show benefits the industry as a whole.

I also get out through the territory and buy my feeders, sometimes direct from growers. I have had opportunity to observe the effect of the Stock Show on the industry and it is my opinion that the Livestock Show at Denver is a benefit to the industry as a whole. I think any show is one of the greatest advertisements there is for meat and meat products. It is very educational for people to go there and see the different classes of stock and how they have been bred and improved. I think it is, you might say, it is the top degree for agricultural college or high school students, 4-H Club boys and girls, their aspirations to get to go to some show, Denver or Kansas City, and so forth. The stock judging teams that they send all compete at these shows from the various states and counties, and so forth.

Benefits those who do not attend.

1757 I feel that the benefit spreads out through the industry and touches those who do not even attend the Show. I have seen in my own community where probably the parents would never go to the Show, yet their children became interested through the 4-H Clubs. The boys and girls exhibited their animals at the Show and came back, and their parents

Trans.

got pepped up and soon started to breed better sheep and cattle and hogs.

Income of Respondent directly due to Show.

In my opinion the Denver Show creates an enlarged outlet for livestock which operates beneficially throughout the year. In my opinion a part of the income at the yards is directly traceable to the Show. If they didn't have the Stock Show their income would be very low in January. That is true on account of the immense amount of livestock that the Show draws, especially the large amount of feeder cattle. In other words, in January our feed lot lambs and feeder cattle out in northern Colorado are not quite ready to start to market. They wouldn't usually start until February; March and April are the biggest months. In January the range run is over and there would be practically no business here if it wasn't for the Show. In other words, January would, in my opin-
1758 ion, be a greatly lower month than December so far as cattle or sheep are concerned.

Feeder auction could not be held except at Show time.

In my opinion, the feeder auction could not be held at any time other than at the Denver Stock Show period. The shows in the East generally run in November and December, and having the Denver show in January, it is an ideal time. It gives the eastern cattle man an opportunity to come out here and buy feeder cattle for his second feed or buy young stuff to finish roughing out throughout the winter and put on grass in the summer. It also gives the range man an opportunity to hold back his cattle and hay feed them for the Show because he knows there will be a good market at that time. It saves a glut in the fall by holding back most of these cattle that are exhibited at the show.

Housing not excessive.

In my opinion the Show could not be held suc-
1759 cessfully with any less housing than it has. I have attended shows in Kansas City and Chicago and

Trans.

Ogden and I don't see how you could get along with any less space at all.

Yard trader necessary.

The producer, and by that I mean of course the feeder and fattener, is interested in the buying outlet on the market. So, too, in my opinion, is the yard trader or dealer an important buying outlet on the market. I don't think you could get along without them at all. As I see it, the function of the yard trader on the market is as follows: A range man will ship in his cattle when he rounds them up. He has various grades, sizes and ages. It is impossible for him to grade them at the railroad or at the round-up because he would have to take these back several miles, and it is too expensive, and his practice is to load up,—to just ship them. The commission men are not interested in the mixed lot of stuff, and the average feeder is not. The yard trader can buy these mixed droves of cattle and reshape them and sell them according to grades and classes.

Included in marketing charge.

1760 I don't think the yard trader receives anything free. Everything he gets is included in the marketing charge. I feel that the benefit to the producer of having the yard trader in the yard is such that it is a fair proposition from the standpoint that the use of pens, weighing facilities, etc., by the trader should be included in the marketing charge.

Cross-Examination.

Traders function.

I don't think it possible that the commission man could sort and sell these odd lots of cattle to the same advantage the trader does, for this reason: We will take a commission man today, he might have eight or ten loads of cattle and he would try to sort them up and he might have part of those that he could sell to a packer and he might have a car or two of the same grade but in all probability

Trans.

he would have a part of a car of yearling heifers, and a part of a car of calves, and a part of a car of cows and he might accumulate a carload together and dispose of them the same day and the ship-
1761 per likes to sell out the day he arrives at the market and get his money and go home. In other words, the commission man would have to have more pens and he would have a package of this and that and he would be accumulating together, whereas the yard trader can buy these various packages from several commission men and accumulate a car or several cars of that variety in the same day.

Functions of commission men and traders different.

The functions of the commission man and the trader are entirely different. The commission man can sell the stuff and that is what the producer pays him to do. He doesn't care whether the yard trader buys it or the packer or feeder buys it, just so the commission man sells it for the high dollar. The commission man needs the trader to buy the few odd head that he has to sell. He could not function as well as the trader in disposing of these odd lots. It would take him longer to accumulate them and it would be more expensive.

Trader receives no free service.

My testimony in substance is that when the original shipper ships in here and pays his yardage charges that the trader services and facilities which he receives are included in the original yardage
1762 charge. That is, the purchaser pays yardage on his cattle and the trader does not have to pay yardage on his. He does have to buy his hay the same as the producer and the shipper. To that extent they are on terms of equality.

I am familiar with what services and facilities the trader receives from the stockyards as compared to the services and facilities received by the shipper. The way I see it, the shipper comes in and is entitled to yard room and a place where the

Trans.

stock can be fed, watered and exhibited for sale. The trader has certain pens allotted to him that he has to have to put the stuff in that he buys, so both the shipper and the trader need their yard space, that is, their pen space. I don't think there is any difference between the trader and the shipper as to the facilities they receive.

1763 I ship from ten to forty per cent of my sheep to the Denver yards, and from seventy-five to eighty per cent of my cattle. In general, both my sheep and my cattle are finished products ready for the packer, although I have sold feeders, that is, short-fed feeders, in the auction at the Denver Show. I don't remember just how many.

Show benefits whole industry.

In my opinion, the shipper or producer of livestock who does not sell at the Denver stockyards during the Show week, or does not come here during the Show week, should still pay carrying charges on the Stock Show property by reason of the rates he pays. The Stock Show is a benefit the year round to the whole meat industry.

I am a stockholder in The Denver Union Stock Yard Company and a Director thereof.

1764

Re-direct Examination

Compared to my interest in the livestock industry the size of my investment in the Denver yards is very small. I was asked to become a member of the Board of Directors of the Denver yards when the Stockyards was taken over from the packers. I was one of the original Directors and presumably represented the lamb-feeding industry of northern Colorado. I presume the policy of the Yard, I know it has been, is to get the customers of the yards interested in the yards.

Q. As a matter of fact, looking at the personnel of the Board of the Yards, there are

Trans.

those representing the cattle industry, are there not?

A. Yes, sir.

Q. Those representing the packing industry, are there not?

1765 A. Yes, sir.

Q. Those representing the commission men, are there not?

A. Yes, sir, also the producers of lambs and the producers of cattle are represented, as well as feeders of lambs and cattle.

Q. And the bankers that do the underwriting and the taking over of the yards from the packers are represented, are they not?

A. Yes, sir.

Q. And it happens that the attorney for the company is also on the Board, is he not?

A. Yes, sir.

Q. As a matter of fact, do you not know that when Mr. Arthur Bosworth, representing the bankers at the time of the taking over of the yard, spoke to you about membership, Mr. Arthur Bosworth and Mr. Shoemaker, I should say, it was definitely mentioned to you that they wanted you among other things for your representation of the lamb feeding industry?

A. Yes, sir.

(Witness continuing). The business investment which I have in my business, the lamb feeding and cattle feeding end of the game, that is, the annual turnover, varies each year according to the cost of the feed and the cost of the animals,—anywhere 957
from three to five hundred thousand dollars, where-

Trans.

as the size of my investment in the Stockyards is,
1766 I think, 500 shares of common stock.

When I used the word "short-feeder" in my examination and cross-examination, I meant one that is partially matured and requires less feeding than a matured animal. It is one that the feeder can finish out in three or four months but is not good enough for the packer to buy at the time of the purchase. People take these short feeders and feed them on beet by-products, beet tops, and then for various reasons frequently sell them at the Show. I feel that if the Show were not here in Denver the same incentive to buy short feeders would not exist on the part of those people.

1768 *Re-cross Examination*

I think my wife has some preferred stock; maybe I have ten shares and my mother had twenty, I think. I have no bonds.

I don't know of any stockyards that amounts to anything that does not have stock shows.

Witness excused.

Mr. L. M. Pexton was recalled to the stand.

I was for years connected with the railroads at the stockyards prior to accepting employment by the Yard Company. Also I was the traffic counsel
1769 in connection with the so-called transit case recently decided by the Interstate Commerce Commission affecting the transit at the Denver yards, and I keep a traffic file, check all supplements, handle these matters affecting transit with the railroads and endeavor to keep right up to date on what everyone on the market can do. That is part [illegible] official duty as Assistant General Manager of the Yards.

Trans.

Q. I am going to ask you to explain fully the transit operation at Denver with regard to the privilege of sorting, consolidating and change of ownership, the preservation of what is known as the freight benefit, and whether or not in your opinion the yard trader is better suited and can frequently preserve the freight where the commission men cannot?

The sale-in-transit arrangement explained.

A. The transit arrangement provides that shipments from different owners and from different points of origin may be sorted together, using the D. & R. G. W. as an example, shipments originating at Littleton, Colorado, twelve miles from Denver, may be sorted with any other shipment originating on the D. & R.
1770 G. W. arriving for the same day's market even though consigned to different commission firms at Denver. Using the example mentioned, that is, Pagosa Springs, in Mr. Farr's testimony, John Doe may have a shipment into one firm and Richard Roe into another commission firm. A trader can buy a package or parcel from each firm, sorting together into carload units, preserving the through rate. The peculiarities of the business practically prohibit a commission firm doing this same thing. That is, each firm would be compelled to find a buyer who would purchase his parcel and who would then go to the other commission firm the same day purchasing the balance of the load from that firm. The trader in his operations knows he can sort together and thus purchase a few head from one firm, a few head from another and still additional cattle from another, sorting together and preserving the through rate, which saves about 25 cents per hundred or up to $60 per car. Commission firms have tried to do this but have found that as a practical matter

Trader can render patron better service than commission man in this regard.

Trans.

where they have a good volume of business, time will not permit. Neither do they have the necessary men or contact to local buyers who will purchase here and there.

Q. Mr. Pexton, you have spoken of the saving of $60 per car, maximum, I presume, is that cattle or sheep?

A. Well, the saving is 25 cents per hundred, and the dollars per car depend upon the weight. If the car happens to weigh 30,000 pounds, the saving would be $75 per car. We are using averages.

Q. Now, does that result in benefit to the producer in your opinion?

Results in higher price to shipper.

1771 A. Most certainly, because this trader, knowing what he can do, and having purchased other cattle which will sort, can bid up 25 cents per hundred more than someone not in position to preserve the through rate and still lay them down at the Missouri River for the same cost. That happens many times daily during the fall movement. Traders will purchase a package of cattle from one firm and then go to others, making similar purchases, knowing they can sort. The only requirement is that they originate on the same railroad. Off of the D. & R. G. on Monday morning during the fall receipts will run up to 250 to 300 carloads of cattle, which provide a very large volume for a trader to purchase from. I think we have a very peculiar situation with respect to this which does not exist at other markets. Our feeding section is north or east of Denver and practically all shipments fattening in transit do so at the through rate. There is no movement westbound or back-haul, as there is at the Missouri River. For example, a substantial

Trans.

portion of the feeder cattle offered at Omaha are moved back into Nebraska for fattening and the through rates would not apply. At
1772 Denver, no such condition exists. All of the feeding district is beyond the market and we have transit arrangements which permit the movement, for example, of D. & R. G. cattle from Denver to Fort Collins, Colorado, north of Denver, and back to Denver en route to the East at the through rate. Similar provisions exist on all the railroads coming into Denver.

Sorting privilege.

(Witness continuing). We may sort together all shipments originating on the Union Pacific proper between Denver and Ogden. We may sort all shipments originating on the O. S. L. together. The principal holds true on all lines. I have simply used the D. & R. G. W. as representative of the normal situation. But we cannot sort, for example, shipments coming in for the same market session on the D. & R. G. with shipments coming in on the U. P., but we can sort cattle coming in on the D. & R. G. originating in the San Luis Valley, in the Gunnison country, in the Rifle country, and in Utah, all into one lot, preserving the through rate from the highest rated point. The purpose of the sorting, of which I have been speaking, is to make carload units. Different from other markets we have practically no demand at the Denver market for less than carload units. At other points there
1773 is some demand for small lots of cattle, ten head, for example. However, no such demand exists at Denver. We have some truck-out business, but that is also usually in lots which will finish in carloads. I know of only one or two feeders of the many hundreds purchasing cattle at Denver that are in the market for other than carload units at the time of purchasing feeder cattle. The common practice in both cattle and sheep is to buy, for example, three

cars which will expand into four cars after they are fat when moving out of the feed lot. Expansion into four cars is due to the increase in weight rather than any increase in the number of cattle. In other words, you can put a greater number of 800-pound steers in a car than you can of 1,200-pound steers, and in lambs, for example, a normal feeder will buy three loads or 900 head. That is the smaller feeders. Outbound, after they are fat, he will load four cars, or an average of 225 to the car.

"Package" defined.

On livestock markets the phrase "package" means a few head or an odd lot and not a carload unit.
1774 A man will buy a package here and a package there, which means he will buy three or four head in one place and possibly seven or eight in another until he has accumulated the trade unit, which is a carload.

1775 At this point the witness pointed out an error on Respondent's Exhibit 6, namely that at the bottom of the page showing the monthly receipts of sheep at the Denver market there appears a typographical error. It was stated by the witness that the phrase "average variation five months" should be corrected to read "average variation five years." The record copy was corrected accordingly.

Cross-examination

Peak season.

The percentage of feeder lambs that are sorted out of fat lambs as they come in depends on the time of year. Our receipts of feeders are very light up to about the first of September. From September the first until the middle of December we receive normally from six to eight hundred thousand head of feeders, which would be from 50 to 75 per cent of our receipts during that part of the year, depending on the moisture conditions in range territory. When there is plenty of moisture the percentage of feeders is less than when there is dry

Trans.

1776 weather. Last year, for example, the greater part of our fall receipts were feeders.

Both feeder and fat lambs take advantage of the transit rate of which I have been speaking, that is, of course, unless the fat lambs are slaughtered at Denver. That slaughter, however, only runs about 20,000 head per month, which amounted to only about 8% of our total receipts last year. The remainder of the fat lambs most of them are forwarded to eastern markets or eastern slaughtering points. We have shipped fat lambs out of here that have gone to Boston, New York, Brooklyn, Chicago, St. Louis, St. Paul, all Missouri River points and the interior of Iowa and other points.

The larger part of our feeder lambs are moved to Colorado and Nebraska feed lots; a smaller part to points east of the Missouri River.

1777 When I made the statement that the Denver market had no monopoly I meant that there is no condition which forces this business to the Denver market or which creates a condition where we can expect the same amount of receipts one year after another unless we keep on our toes, actively solicit the business, maintain buyers on the market and furnish facilities adequate to handle the business as it comes. For instance, I consider that to a more or less extent the electric light company here in Denver has a monopoly, and the same is true of our street car service here, except for the competition they might meet from automobiles, but anyone who wants to ride a street car has to patronize the Denver Tramway Company.

Respondent does not have monoply.

Anyone who desires to market livestock in Denver has to patronize The Denver Union Stock Yard Company unless he sells direct to the packers. I would say that he was almost compelled to use our facilities if he is going to sell at Denver. However,

Trans.

1778 about a third of our hog receipts are sold in Denver direct to Denver packers. These hogs come mostly from producers who ship direct. The territory from which the packers here in Denver buy hogs which are shipped in direct includes eastern Colorado, western Nebraska and Kansas, as far east as Grand Island and York, Nebraska.

Some of our Denver packers obtain hogs through concentration points. These points are McCook, Hastings, York, Aurora, Grand Island, North Platte, Sterling, Sidney, Alliance and possibly two or three others.

I would not say that there was a certain zone of livestock producing territory surrounding Denver in which the Denver market practically dominates the livestock production. I would not say that for the reason that we lose more business out
1779 of what we term the eastern part of the northern Colorado feed lot area than we do, for example, out of the State of Idaho. That is a greater percentage. Using this spring as an example, from the territory on the Union Pacific between Denver and Cheyenne, including the Greeley district, we received approximately 65 per cent of the fat lambs even though all of this territory is within 75 miles of the Denver market. On the other hand this spring following that movement I feel we received about 80 per cent of lambs shipped out of California in the hands of producers or speculators. It is only by keeping the demand alive and maintaining prices, at least comparable to other points that we receive business even from closely adjacent points. There is, however, some small lot livestock moving in by truck that we might have a right to feel we would receive. A good part of that, however, has recently been selling through auction sales. There is a tendency for livestock truck receipts to increase in the

Trans.

Denver market. The normal tendency where shipments are made by truck is to ship to the nearest market where good prices can be obtained. If this truck shipment increased, it would tend to increase the drawing power which this market has over ter-
1780 ritory contiguous to Denver in the absence of the transit arrangement. We actively solicit and suggest to shippers that they move by rail for the reason that we know if they use the rails their livestock will sell for approximately 25 cents per hundred better at Denver. We have found dissatisfaction on the part of patrons moving by truck who look at the Denver market quotation and ship in like quality livestock and expect to receive the same price when moving by truck as when moving by rail.

Truck receipts.

It is true that we feel we have more of a hold on truck shipments than we have on rail shipments. The general history of the livestock movement for the past few years, not only at Denver but at all terminal markets, is to show a very marked increase in truck receipts as compared with rail shipments. However, truck receipts at Denver in relation to the total supply constitute a less per cent than they do at any other market with a possible exception
1781 of Chicago, where the highly congested districts mitigate against truck movements. I do not feel that our truck movement will ever reach the volume that it has at the Missouri River markets.

Q. Now you list certain states from which Denver drew its supply at page 1502 in the record, I cannot give you the page in your testimony, you make this statement: "Receipts of Colorado cattle at the 4 river markets in 1933 total 74,953 head, or 25 per cent of the Denver receipts." Would that not indicate that as to the Colorado cattle the Denver market really dominates?

Trans.

A. I feel the Denver market dominates on Colorado cattle, yes, sir.

(Witness continuing). I have made no study to determine what percentage of feeders loading out of the territory which is tributary to Denver takes advantage of this 85% Colorado feeder rate. Of course, the majority of this business now moves to the Denver market and when selling there must do so at the hundred per cent rate. In order for me to make a study I would be compelled to know the movement which can only be secured from the railroads and which so far we have not been able to secure within any degree of accuracy, and that would be a big job.

1782 I do not think that this 85% rate has been really a material factor in the movement of feeder livestock out of this area so far, but we do think there is a growing tendency along that line as producers and feeders become more acquainted with it. All of these things more or less follow a trend. These rates were effective in 1932. We can sense on the part of producers a desire to take advantage of them more each year. Witness Collins, for example, moved his cattle from Kit Carson, Colorado, into Ohio at the 85 per cent rate. That was partially due to weather conditions. Just what effect it will have on the future it is impossible to estimate.

Q. But, as a matter of fact, suppose I come out into this territory to buy, say, a half dozen carloads of cattle, the extra savings that I would make on the freight rates could be very easily eaten by the extra expense I would be put to in running around and locating those cattle, and getting them loaded out, would it not?

A. Whether that was true or not we would try to convince you that it was, being on the market.

Q. And as a matter of fact that is the ordinary situation unless a feeder is buying a relatively large string of cattle, is it not?

A. That is the general condition unless the man is buying a good sized string and can buy them at point of origin under the Denver market.

1783 Q. And the number of purchasers of these relatively large strings represent a relatively small part of the total feeding of livestock, do they not?

A. Well, not so much in our area. Our people out here are on the average much larger feeders than at points in the East. We have people, there is one feeder, for example, in the North Platte Valley that bought 60 carloads at Gunnison, Colorado, last fall.

Q. But that is an unusual situation, is it not?

A. Well, it is unusual, of course, or our business would be materially less but we have numerous large sized feeders that go to the point of origin and buy good sized strings.

Now with respect to the solicitation done by the Yard Company, at this time we have three solicitors in the field. We have had three for about the last two years. They are not the same men that are employed now and it varies at different times of the year. I would say we have had an average of three for about the last two years. Prior to that
time we had two part of the time and three part of 967
1784 the time. The Company has been rather concerned

Trans.

about the establishment of the transit at the Missouri River. We have felt we could cement our relations with the patrons of the market; that we should do everything possible to improve our contacts with them and it has been the feeling of the management that we should increase rather than decrease our solicitation due to the various competitive conditions, such as auction sales and direct buying, establishment of transit at the river and the other things that seem to us to imperil our business to a more or less extent. In a general way I am acquainted with what policy the river markets have had with regard to putting solicitors in the country. Some of the markets have had a rather large corps of solicitors and others have a small number. I know one Missouri river market which has a small number and which has suffered a very severe loss of business. With two of the markets I would say that the tendency within the past two years has been to increase their solicitation, and with two, the contrary. It is true that the supply of livestock which is available for some form of marketing, apart from ordinary production fluctuations, runs right along and the amount that goes to market is neither increased nor decreased by the amount of solicitation. And, for instance, if Sioux City or Omaha comes into our territory and takes livestock into Omaha to the detriment of our market, or we do the same thing to them, the actual number of livestock that goes on to the terminal markets is not changed, but that involves a principle of American intuition.

1785 I do not think that we have any more automobile salesmen on the road who would probably increase the need for automobiles and yet the Government does not criticize the additional salesmen. We feel the business is there and we have a right, that the management has a right to endeavor to secure and to

decide what number of men they shall use in that endeavor. Since there is only so much livestock avail-
1786 able, it goes to some market; the increase in solicitation by the various markets is not going to increase the total supply at all markets. It merely means a shift from one market to the other of the supply that is actually in the country. Of course, we contend that when we shift it to the Denver market we improve the net price the shipper receives much more than his proportion of the cost of that solicitation. The solicitor from Sioux City and Omaha may attempt to prove the same thing.

Livestock auctions.

With respect to the auction markets, I made a rather extended trip this spring to eastern Colorado and western Kansas and Nebraska investigating these markets, checking their source of supply, ascertaining the rates paid for sale at the markets, and also the disposition of the livestock. In this territory they handle cattle, hogs and horses. It not being a sheep producing country, very few sheep are handled. They also handle other miscellaneous commodities, feed, second hand furniture, second hand machinery and so forth. The disposition of the livestock varies, depending on the point of the auction. At most of the points, California hog buyers are represented and the California type hogs, that is, hogs 200 pounds and under, are purchased by these California buyers; the feed er livestock offered is usually purchased by traders who sell locally, if there is demand, or ship into other communities. In western Kansas, for example, during the period of this visit, the traders were purchasing the feeder cattle offered and moving into the Corn Belt east of the Missouri River. The fat cattle are usually not purchased by packers unless they are packers in that particular locality, such as at Scottsbluff, Nebraska, and Sterling, Colorado, but are purchased by traders who move to

various markets. For example, at Sterling, Colorado, a part of the fat cattle purchased there come to Denver market and a part go to markets farther east, if the trader is able to obtain a carload. That situation, in a measure, changes the condition which would otherwise exist. For example, if a producer at Sterling had six head of fat cattle and no other outlet, he would probably truck them to the Denver market. When selling through the auction, a trader may purchase his six and other cattle sufficient to make a carload and move to Omaha or Chicago, or he might come to Denver. However,
1788 that is the exception. There has always been a great deal of trading in feeder cattle out in this range country, but the country trading on feeder livestock we have had in the past has largely been in large droves or lots. These auction sales do not handle any of the large droves but handle the small lots which formerly were handled by local buyers and sent to some market. In the old days there were local buyers at most every town who would purchase livestock and usually ship to the nearest market. The auction sales, in a measure, replaced these buyers. However, because of their volume, they constitute a menace to the central markets much more than I feel local buyers formerly did.

With respect to the volume that is handled at these auction markets, there are four auction sales at Greeley. The week we checked them, they handled approximately 800 cattle. The day I was at Garden City, Kansas, that auction handled 981 cattle, I
1789 believe it was. The day I was at Dodge City, Kansas, that auction handled approximately 1,200 cattle and had handled up to 1,900. At Scottsbluff, where there are two auctions handling largely feeder cattle, although they do a good volume with fat cattle, their sales run up to, that is, the two of them in the Fall, 5,000 per week; when there is an active demand there

Trans.

for feeder cattle. During the spring there are less sales, of course, on account of no feeders being offered; however, there has been a good volume there the past three or four months which have been purchased, in a large measure, by traders from Omaha market and move to the Pacific Coast, to Omaha or to Chicago. One menace we have in this territory on these auction sales is the Pacific Coast demand. They are in the market for hogs, as I previously stated, and for fat cattle which are not as highly finished as the Missouri River or Chicago market demands. The California demand for fat cattle is for fat cows, fat heifers and fat steers which we term two-way cattle, or about half-fat. The auction markets in our territory are not under supervision. I understand, however, that Scottsbluff has been posted. I can only judge the policy of the Department of Agriculture with respect to the posting of these markets by what I observe.
1790 I know that Scottsbluff is posted and also Grand Island, and possibly York. None of the other markets that I visited were posted, although from our measurements they came within the definition of the Packers and Stockyards Act, that is, they contained over 20,000 square feet of pens, excluding alleys. Most of them have sprung up in the last year or two years. Some of them, Dodge City and Garden City, for example, have been operating about three years and have not been posted.

Now with respect to the direct buying of fat cattle in this territory, I stated on direct that certain Iowa packers have been in this territory. I specifically mentioned Morrell, who was here this spring (1935). Until this year Iowa packers have not been in the habit of purchasing fat cattle in this
1791 area. I am aware that there has been a very unusual condition in the fat cattle market both in this country and throughout the feeding country in the

Direct buying.

Trans.

middle West. We are hopeful that as soon as normal supplies are available in the Corn Belt and near their plants, these Iowa packers will not come this far West for fat cattle, although they started out here some years ago on sheep and have been constant and regular buyers since then. It is true, however, that the number of sheep available in the Corn Belt for packing plants is in no way comparable with the number of cattle under usual conditions.

It is my understanding that on the additional trips made by Morrell, apart from that first trip, he bought additional cattle. He left shortly after this first trip to go to Chicago and Washington, but I was advised that he was out here again and purchased 1,200 head the last trip.

1792 With respect to the hogs which pass through this market en route to California, these hogs are purchased east of here as a rule. They usually carry their own corn which has been purchased at the point of origin, placed in sacks and tied on the side of the car. We receive $1.00 per car unloading, $1.00 per car loading, $1.00 per car watering and $1.00 per car for taking this feed that is on the side and spreading it on the car floor, a total of $4.00. These shipments normally originate about as far East as Grand Island and Lincoln, Nebraska. Recently hogs have been received from Omaha, Shenandoah and other Iowa points. Our company gets a revenue of approximately $4.00 per car on these shipments of hogs. If our rates were properly related I do not feel that if we did not have this California movement the larger part of this California hog business would move East for this reason. California has a certain demand for pork products which will be filled from some source. The most advantageous source is eastern Colorado and western Nebraska and Kansas. If California demand
1793 did not exist, these hogs would move East, as they

Trans.

did prior to ten and fifteen years ago. Now that they are moving West, we feel they will continue to, and that with a properly related rate structure we will be able to get full yardage on them instead of merely a feeding charge. As the movement continues, it will tend to increase the revenues of our company. That is our hope and ambition, that is, if they are slaughtered at Denver, but even if they are not slaughtered we still get some revenue.

Government and drouth cattle.

With respect to the receipts and revenues of our company during the calendar year 1934,—1934 was an unusual year on account of the drought conditions. As a result of the drought we, of course, received a large amount of Government livestock, which increased our income. We also received some livestock forced to market on account of the drought, which under normal conditions would not have moved. The sheep movement was, we feel, somewhat
1794 increased on account of the drought due to lack of ability on the part of producers to hold back their normal amount of ewe lambs. There were also some Government receipts of old ewes. The hog movement in our territory was increased due to the drought in eastern Colorado and Western Kansas and Nebraska, due to lack of feed to carry hogs over for production. I think the Government auditors were correct in eliminating insofar as it was possible the revenues and expenses incident to the movement of
1795 Government cattle. I do not think that without eliminating the Governments and taking the total business of our company for 1934, we would have a fair picture to use in drawing conclusions of what the future revenue of the Company might be. Based on what the Government itself says with reference to livestock production in this territory, I believe that my estimates of revenue for 1935 present a fair picture from which the Government might make estimates as to what our future revenue will be.

Trans.

Let me add that we are, of course, through solicitation and work, going to endeavor to secure every bit of business we can. Just how successful we will be remains to be seen. The 1935 estimate is based on the reduced production of livestock. In a sense the reduction shown in 1935 is a compliment to the increased receipts that we received in 1934, that is, we no doubt received some 1935 business in 1934 due to the drought.

I don't think that either 1934 or 1935 are indicative of our business for the future. I don't think we will be over the effects of the drought by 1936, and I feel that it will be at least January 1, 1937, before we will be back to normal. In putting in our estimated return for 1935, we also estimated substantially the same return for 1936.

1799 In my direct examination I introduced a copy of the Agricultural Outlook for 1935 as Respondent's Exhibit No. 10, and used the data contained in that report and certain opinions expressed therein in connection with making my estimates as to future receipts. One of the statements made in that report is an estimate that 80% of the Government purchases of cattle were female, and I used that percentage in my computation. Since the Government cattle program has been concluded, I have seen no information showing the actual percentages of females that were purchased. I have discussed with Mr. Petrie, in charge of this work, and also with others, and the information I obtained would seem to bear this out. The usual estimate is a little

1800 higher than 80%. I mean to say that the estimate of those with whom I have talked indicates that the actual figures were a little above the Government estimate. For example, an actual count was made at San Francisco, to which point we shipped several hundred cars of cattle. As I recall, the actual count there showed 85% females. However,

Trans.

if, before this hearing is concluded, the Government is able to introduce actual figures as to the Government livestock purchases in this territory, any material variation in that percentage would, to that extent, affect the estimates I have made in my tables and our estimated revenues should be revised to that extent.

I am aware that the estimates included in Respondent's Exhibit 10, and especially the estimate of cattle population have been determined to be somewhat too low and January 1st there was a revision of figures as to the cattle population in a number of the States. However, the cattle we receive are from the actual number on hand and not what the Government estimate is, and if the Government were off one million head, for example, in Colorado that would not actually affect the production or our receipts.

1801 Now, with respect to lamb feeding in the Colorado feed lots. I testified that I felt that the volume of feeding in these feed lots might be adversely affected by high prices of feeder lambs this fall. Some years ago when feeder lambs were high, that is from ten to twelve cents a pound, and these feeders were rather prosperous, the level of feeder lamb prices in the Fall did not seem to make any difference. Since 1931 high feeder lamb prices have seemed to affect the volume of feeding in this way; most of the feeders up there are indebted to the bank, a condition that did not exist prior to 1931, and the bank more or less set a maximum price that may be paid by people who owe them money. In one recent year, for example, the bankers got together and established a maximum price of around 6 cents per hundred pounds for feeder lambs. That, as I recall, was in 1932. The going price on feeders early in the fall was above 6 cents, with the result that we had a very light demand for feeder lambs,

from the northern Colorado territory, and it appeared feeding would be quite light. Later in the season, however, the market dropped below 6 cents and the feeders then came in in good numbers. Based on visits with bankers and on my experience I would say that the bankers up there this fall would be quite apt to get together and set some maximum price that feeders indebted to them might pay for feed-lot lambs. I am inclined to believe this would
1802 be around 7 cents. It is true that there is more profit in feeding lambs with fairly high feeder prices and high prices on fat lambs than when both feeder and fat lambs are cheap. The years of greatest profit to lamb feeders have been on high prices when the weight put on by the lambs or the gain more nearly paid out. That is even during the periods of cheap feed prices, as for example, the last two years or three the gain on lambs has cost up to 10 cents per pound whereas the market price for lambs was only around 7 and 7½ cents per pound; therefore there was a loss on the gain. The profit came from the increase in price and the original weight of the feeder lambs, but as lamb prices go up there is also more chance for losses and a greater speculation, and these figures are not inclined to permit people owing them money to speculate. In my opinion, it is the indication at this time from the general livestock conditions existing all over the country that fat lambs next winter will bring fairly good prices.

Q. Referring to Respondent's Exhibit No. 11, I notice that your estimated traffic expense for 1935 is the same as it was in 1933. I take it the policy of your company is that even though it may have in prospect decreased receipts that it will continue to spend the same amount in connection with traffic.

Trans.

1803 A. Yes, that is our policy. In fact we feel, and when I say "we" I am speaking for the management of the Company, we feel that during the period of curtailed supply our traffic expense should be increased in order not only to maintain a percentage volume but also to increase that, if possible, and thereby avoid operating losses in net revenue.

(Witness continuing). I used the same estimated expense for taxes, real and personal, in 1935 as were shown in our books for 1933.

Q. Has there been any reduction in assessments in Denver since the tax expense of 1933?

MR. BOSWORTH: I object to that as incompetent, irrelevant and immaterial.

THE EXAMINER: Objection overruled.

(Witness continuing). I am unable to answer that definitely without checking the books. I believe that due to depreciation there might be a slight decrease, but I don't believe it amounts to a great deal. I believe I could ascertain at the present time
1804 what our tax bill for 1935 will be. I started to add, our taxes in 1933, that is, real and personal, total \$33,981.00. For 1934 they total \$33,092, a decrease of about \$900.00. I will endeavor to ascertain the 1935 prospective payments. The figure, \$33,981.55,
1805 being taxes shown for the year 1933, are the taxes paid in 1933 to cover the taxes assessed for the previous year, 1932, and the taxes which we would pay in 1935 would be the taxes assessed in the year 1934. That is the figure I will endeavor to obtain.

Now with respect to our Stock Show. I stated that the National Western Stock Show is the third largest and most important livestock show in the United States. The two which rank ahead of it are the Chicago Show, the International, and the Stock Show.

Trans.

Kansas City Show, the American Royal. Other stockyard companies which have, in connection with their business a show somewhat similar to the show here at Denver besides Chicago and Kansas City, are, Omaha, Fort Worth, Portland, Ogden and Los Angeles. They have some calf shows, I believe, at St. Paul or have had, also at Sioux City and St. Joseph. Due to the nearness of one Missouri River market to another a stock show is not as necessary at St. Joe and Sioux City as might be if there were no shows at Kansas City and Omaha. They have a calf and 4-H Club Show at Oklahoma City which in times past they tried to expand into a show comparable to the one at Denver and Fort Worth. Due, I feel, to lack of co-operation among all concerned
1806 on the market, the Oklahoma City show has not developed to the extent the Fort Worth has and I feel the quality of Oklahoma cattle indicates that. I have never attended the Omaha Show but I believe it has been going about five years. They do not have a pavilion for the showing of livestock such as we have. Their show is held at the Aksarben grounds, except the feeder show, which is held in the yard proper. All the pure-bred livestock is shown approximately a mile to a mile and a half from the stockyard proper, and if the stockyard company exercises any control over the show it is my understanding that it is indirect control, although I know the management of the yard takes quite an interest in it.

1807 St. Joe, Sioux City, St. Louis, St. Paul, Cincinnati, Indianapolis, Cleveland, Jersey City, Buffalo and Pittsburgh have no large stock show comparable to the one here at Denver. They are good sized markets but their conditions are entirely different than Denver. Omaha happens to have, or has had a race track which paid part of the expense of this, that being the reason the stadium was con-

Trans.
1808 structed where it was. None of these markets that you enumerate are in the heart of the range country similar to the location of Denver.

It is only within the last few years that Omaha has given any attention to the development of the livestock show. Of course I think they have been negligent in the past and have not fulfilled their duty to the livestock industry.

Increased business due to Show.

In our Denver Show our feeder cattle are lotted in pens in the main part of the yard from the main building down to about the 22nd or 23rd alley. We also usually have fat carloads to show at our Show. At the last show there were about 12 or 13 and they too are lotted in pens in the main area of the yards near the Exchange Building.

1809 The pure-bred bulls that were sold during the show were sold both in carload lots and as individuals. They are sold in the stockyards proper in a triangle south of the Exchange Building and in pens west of the Exchange Building.

Up on the hill we handle the registered bulls and females, Boys' and Girls' Club animals, hogs, sheep, and so forth.

The carload hogs are in the regular hog division. The pure-breds are up on the hill. Carload sheep are exhibited in the sheep barn and the pure-breds on the hill.

The horses are generally pure-bred stallions, mares, etc., which are exhibited on the lower floor
1810 of the three-story barn. We also have a chicken and poultry division and they have there a few farm implements placed around at different points. There may be some rabbits and they may have some pigeons up on the third floor of the three-story barn. It is my understanding that these latter classes, through their entry fees, etc., pay their own

Trans.

way and they contend, at least, that they much more than pay their way through admission fees of people coming to the show to visit those particular exhibits.

1811 These pure-bred livestock that are exhibited up on the hill are exhibited by the so-called professional showmen that make the regular circuit. However, the Club stuff, 4-H Club Boys and Girls, is not professional livestock. The number of sales made by these professional exhibitors are relatively small in the number of head, it is true, but it is rather large in dollars.

Increased Prices due to Show.

Our sale of feeder cattle is substantially a carlot matter. In my direct examination I testified that last year the normal selling price was around $1.00 to $1.50 above the price of market stuff that sold a month previously, that is, for comparable livestock. I am not taking into consideration the loads entered in the Show that won premiums that probably sold, oh, probably $6, $7 to $10 a hundred more.

I know that the prices in our feeder market at
1812 this past show were from $1.50 to $3.00 a hundred higher than even a week before the show and were higher than that compared to early December or late November. I will also endeavor to secure similar prices at the Kansas City and Omaha markets. Depending on the season of the year the normal run of feeder livestock ends at the Denver market from the last week in November to the second week in December. The feeder livestock that is here during the January show is livestock that in some cases is held back by the producer for the purpose of bringing to the show, and in some cases they are warmed-up cattle, that is, cattle that have been purchased by northern Colorado feeders in the fall for the express purpose of holding on beet tops or other feed until the show and fre-

quently they are cattle from territory outside of what we call Denver cattle territory. The cattle purchased by northern Colorado operators, if the
1813 show did not exist, would probably sell to move into the Corn Belt to a point where they would not come back to Denver. These latter cattle of which I have spoken that have been on a so-called short feed come in in somewhat higher flesh than normal range cattle; they will gain something between the time they are purchased and the time they are sold during the Show.

Naturally a producer expecting to exhibit at the Show will save his best cattle for that purpose. However, we have large numbers of cattle during the fall, marketed during the regular marketing season, which are very comparable in quality to the heavier run during the Show, but it is true that normally a man does not save out cattle that he does not deem the best that he has. However, we receive many cattle for the regular market during the Show week which are not entered in the Show. The number of carloads actually entered at the Show to compete for prizes total on the average from 100 to 125 cars. Our receipts of feeder cattle for Show week will run from 20,000 to 30,000, which would be from 500 to 700 carloads.

Relative to our average run during the height
1814 of the season, I would say that this 500 to 700 carloads run a little higher in quality, that is the average, you might say, a weighted average of all the 500 or 700 carloads we receive during Show week runs a little higher than a weighted average of 500 to 700 carloads we might receive some Monday during the fall. However, we get very good cattle during the fall.

These cattle that are held out for the Show are generally only hay-fed cattle. The custom of the

Trans.

Show is that cattle entered there, that is feeder cattle will not have had grain. They are probably given all the hay they will consume. However, in mountain country, during normal times, all of the cattle are given all of the hay they will consume, because it is a surplus area for hay. Except in northern Colorado on warmed-up cattle, I wouldn't say that any of the cattle in the Show, except, of course, with minor exceptions, have had alfalfa.

They are selected so that they are fairly uniform by carload and indicate the breed, characteristics, and so on. That is, they are blocky Hereford cattle
1815 and white-faced cattle.

The barn up on the hill was not in the last Show. It usually is, and I would say that since it was built about 1918 or 1919, I believe it has been used for show purposes all but one or two years. Last fall, in an effort to co-operate with the Government, we leased this barn to Swift & Company for the storage of Government hides from drought cattle, there being no other facilities near the yards or in Denver where hides could be stored. We would have preferred not to have done this, but Swift & Company were somewhat insistent on it, and seemed to feel that we should co-operate with the movement to that extent. The barn was full of hides during Show week, for which reason everyone had to crowd up and be satisfied with the other facilities that were available.

The barn was built by the Stock Show Association. The Stock Show Association is a non-profit corporation. There are no shares of stock. Memberships in it were originally subscribed for by various people. It pays no dividends, of course; was not organized for that purpose. Memberships
1816 were sold originally as a clever way, you might say, of getting money for the Show and thereby

Trans.

relieving the Yard Company of that expense. For operating convenience, and as I explained in my direct testimony, to secure more interest in the Show, to increase revenue and reduce expense, ostensibly they have a lease. However, the management of the stockyards company practically dictates their policies and their actions and their expenditures.

1817 Besides the pavilion on the hill, the lease covers the other buildings on the hill as well during Show week. The pavilion was built under the direction of the Association. I believe the Association, because they are such an association and for that reason were in a position to do so, went downtown and secured donations from various people for the building of this barn, or sales pavilion rather, which the Stockyard Company would have found it impossible to do. Now, just as in the case of the tile barn, following a year of unusual returns due to the war, the Show Association had a little revenue left after paying their rent; they took this revenue and built the tile barn. Two or three years later they had a deficit of some $23,000, which the Stock Yard Company had to pay. We then took title to the barn. Because of rent they have not paid in the past we feel that the sales pavilion is ours, and we feel the same way about the tile barn. The deficit that we have been forced to absorb, or the rent we have not collected, amounts to a great deal more than the value of both of these structures.

The only contribution our company makes toward the premium list is in the form of ads. Of course, we stand behind the Show, and if, at the end of the season they are short, the Stock Yard Company is forced to absorb the deficit. Now, the premium list and other matters of that kind go into the general pot, that is the revenue from them and the

expense they caused.

1818 I think that the yardage revenue on the individual animals sold on the hill during the Show week is permitted to accrue to the Show Association. I believe we could secure information from which we could tell the number of head of animals which are entered in the Show which are sold on the hill property during Show week. We will endeavor to furnish that information for the past three or four years. Of course, the rent we receive for this property during the Show week amounts to a great deal more than this yardage. For that reason we felt it only fair to permit such revenue to accrue to the Show inasmuch as it directly or indirectly comes through the stockyards company anyway. We would find it difficult to secure the co-operation we do from the Show Association if we endeavored to hog, so to speak, all of the revenue up there and still insist on rent. When we turn the premises over to them, as we do in this lease but not actually do, we let them keep the revenue with the understanding that they will pay us what they do pay us if there are profits.

Respondent's Exhibit 13 excludes sales on Hill.

The figures which I have included in Respondent's Exhibit 13 represent all revenue that we receive during January, and of course includes livestock sold in the main yard. It does not include
1819 any sales made up on the hill. The revenue from sales on the hill is shown on Respondent's Exhibit 14, it being included in the Show rent, that is, if we did not permit the Show Association to keep this yardage the rent would not be high.

We were not able to collect our rent during the years 1930, 1931, 1932 and 1933. When the Show runs behind we do not always pay whatever their deficit is directly to them but encourage them to borrow money or otherwise make arrangements

Trans.

to take care of the deficit. This is done for the reason that if the Show Association gets a surplus on hand they might not be inclined to be as economical as we desire them to be. In past years, I believe it was about 1924, or along in there, when we had some exceptionally bad weather during the Show week, there was a deficit of approximately $23,000 one year which was paid by the Stock Yard Company. I do not believe we have made any payments to the Show in the last five years on account of deficits in their operation. It is true that during
1820 the Show there is considerable extra labor on the hill which the Stock Yard Company has to furnish, but the Show always pays us for it if they are able to, and they usually do. In other words, we make our force available to them and bill them for whatever labor they obtain. Our force is familiar with the property, know just what is to be done and are in position to do it with materially less cost than if they hired outside people, and for that reason we clean up the ground for them prior to the Show and after the Show is over. Now, the regular labor incident to the operation of the Show during the Stock Show week is on the Show payroll and is paid for by them. The work which we have to do down in the yards in preparing for the feeder auction and putting up temporary facilities, and so forth, is just charged to regular operating expense, that is to the labor account for the month of January, or expense account.
1821

In my opening statement I did state that I felt that when conditions became normal there was no reason to believe that the Denver market would not continue to grow.

No additions to our physical structure have been made since 1930 which required land that was not previously used in connection with the stockyards structures.

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Growth of Yard.

During the period from 1925 to 1930, we constructed an addition to the cattle yard,—in 1925. We also constructed another addition in 1928. A change was made in 1932 at the north end of the cattle yard through the building of some loading chutes for drive-out livestock. We constructed a new sheep barn in 1929. The site of the new sheep barn had previously had pens upon it and one or two frame barns, so it is true that that land was in use for stockyards purposes prior to that time, or at least the first floor or ground level was in use, so that construction of the sheep barn did not add anything to the area of land which we had in use. It did, of course, furnish considerable more area for yarding and trading, but it did not require any additional land.

The pens constructed in 1925 covered an area of approximately 500 feet long and 90 feet wide. The 1928 construction covered an area of approximately
1823 500 feet wide, 540 feet long, 7¼ acres.

For the period from 1920 up to but not including 1925, we did not construct pens over any additional land.

In my direct testimony I did make some criticism of the use of two or three deck structures, and it is true that the sheep barn is a two or three deck structure. However, my criticism was directed toward using a two or three deck structure for cattle or hogs. I have no such criticism on its use for sheep. I am aware that at a number of markets two-story buildings are used for hogs, usually where they are short of room, such as Kansas City, which has a four deck barn; Sioux City has a two deck barn. The reason was lack of room, in my opinion and not because it was more advisable to handle the traffic that way or more economical.

Trans.

I have made an investigation from an engineering standpoint to determine whether a two-story hog
1824 barn is more expensive than a one-story hog barn. I talked to and consulted with our engineers and found that a two-story concrete barn with roof would cost approximately $100,000 an acre; that a two-story concrete structure without a roof would cost approximately $55,000 per acre; this structure simply being concrete uprights to the second floor and then a flat roof with nothing above that roof except the construction of the pens. Building a frame hog barn of the same size as a concrete hog barn which would cost approximately $300,000 would, according to the information I obtained, cost approximately $100,000, or about one-third. Of course, a wooden structure is subject to much heavier depreciation than a concrete structure. There has been a tendency in some places to construct these buildings either of concrete or brick and steel. We have tried to follow that more or less. I am not just positive that it is more economical for the reason that you get a great deal more in your rate base to start with. The interest on $100,000 or $200,000 additional during the life of the structure can eat up a lot of difference in depreciation. It is true that the fire risk is much less and the fire risk is a hazard of the stockyard business. I believe that the premium rates are higher on wooden structures than on concrete. Just how much I have not ascertained. In the construction of a concrete building it has to have
1825 a roof. If you build one story you have all your foundation and your footings, etc., and merely put the roof on, and when you add the second story you merely have to raise the roof and insert the second story. Of course, when you build a frame structure you do not find it necessary to go to the expense of deep footings and things like that, and while a frame structure is not as permanent and

Trans.

not as satisfactory as a concrete structure, it may be far more economical due to the difference in original cost and the interest and taxes thereon. It is purely a matter of business judgment at the time of the construction and how long you feel you may need the structure in the locality you are constructing it in. After you build a concrete building, it is
1826 there from then on, while a wood building can be moved to a new location rather easily.

Zone 3.

Now as to this 30-acre tract in the northerly end of the yards, which is Zone 3 and a part of Zone 2, I stated that prior to our purchase there was an option taken on 10 acres. It is my understanding that it was in that area in the lower left hand part, substantially a square out of that area. That option was at $4,000 per acre. In my opinion, that 10 acres at the present time, being near the center of the industry, etc., would probably carry a higher value than the remainder.

At the time of the purchase I feel that the entire area was worth substantially the same to the Stock Yard Company, that is, $3,000 per acre. To someone else who wanted to be close in and didn't need the same area, the 10 acres was undoubtedly worth $4,000 an acre to them. The reason that it was worth more to our company is that it was contiguous to other property which we had and we had a specific use for it, and in fact have used most of it for that specific use.

1827 It is true that when that option was in existence the Blayney-Murphy Company contemplated purchasing that tract, and had we not exercised that option, of course there would have been no demand on the part of Blayney-Murphy for the tract that they later purchased. Had they purchased it and erected the plant that they did erect at their present

Trans.

site, we would have found it impossible to purchase that site and erect a structure so that we could use it.

1829 We have in this area covered by the 10-acre option approximately one and three-quarters acres of pens. We also have on this 10 acres our hay barn, manure dump and the Race Court Road; in fact, all of it except approximately one and one-third acres is now occupied by structures, pens, railroads or roadways except one and one-third acres north of Race Court, which is used for the dumping of manure.

If that option had been exercised there would still have been approximately 20 acres left which are in the purchase which we actually made, although the ten acres would have separated our property from this remaining 20 acres to a more or less extent, leaving only an opening approximately 400 feet wide east of the 10 acres. It would, however, have been possible to gain access to the 20 acres through that 400 feet. Just how it would have worked out I do not know because we needed Race Court in order to be able to close the Franklin Street area which was vacated by the City, this amounting to a little over 2 acres. Whether, if our company had purchased the 20 acres without also purchasing the ten we would still have been in the same position to close Franklin Street, is problematical because the road would have had to swing around the 10 acres. However, I would say that we would still have been able to close Franklin Street. In our opinion, unless we could close Franklin Street, it would not have been practical to have
1830 extended our yard north of Franklin Street without constructing a viaduct. I cited the situation at Omaha where they have a viaduct running from L Street over to the Exchange Building and then to Q Street. However, my judgment relative to the

Trans.

Denver yard is not based on the Omaha situation but rather from a practical stockyard operating standpoint.

Expansion land.

Q. Now, on page 1610 of the record, Mr. Pexton, you discussed the question of the management of the company in making purchases of land for expansion. You do not understand, do you, that the Government takes the position that it is not proper for the management to make such purchase of land as it may see fit?

A. I do not understand that the Government criticizes us for anything we may do. They simply say "If you do certain things or purchase certain lands you do so with your own money and not with the producers' money, and at your peril." Now, we cannot agree that that is a proper position to take. The Denver Union Stock Yard Company, for example, after due consideration and careful thought purchased the 30 acres of land we have been discussing. They arrived at their decision to purchase after giving consideration to all factors, including the need of the land and the producers' interest. They immediately used a very substantial part of the land and today are in stockyards operation in one way and another using all of it. The same principle applies to the Stock Show. These things were done for the good of the producer and we feel when the Department attempts to eliminate any part of them, they are in effect, saying they are not for the good of the producer, which we deny, and are taking unto themselves matters that we feel come under management.

1835 (Witness continuing). When this 30-acre tract was purchased the purchase price was $3,000 per acre but when it is brought into the rate base in a rate hearing it is brought in at some value at the

Trans.

time the hearing is held, not necessarily the cost price. Of course, in the case of 30 acres, we feel its present use conclusively shows it is now used and useful in stockyards operation and therefore should be in the rate base and I find it difficult to discuss this particular tract from that particular angle because it is already used and useful. Now, some other tract of land that is being used for expansion purposes, such as Zone 5, I think the management could be criticized if they had an unnecessary or unusual amount of land held for expansion. I do not feel that under regulation we should be permitted to own, for example, a 100 acres north of the—or west of the Platte River for expansion purposes. I do feel that it is good business and proper management to purchase some land when it is available in order to avoid double decking, in order to be able to close streets, or in order to avoid
1836 being held up when we find the land is necessary, in order to avoid the wrecking of buildings and that when we so do that we are acting 100% in the producer's interest and not against him.

On this particular land, if the Government should accept the appraisal of our land experts and our contention that it is used and useful, it would be included in the rate base at from $10,000 to $12,000 an acre. It cost our company $3,000 an acre. If that land had been carried in the rate base over a period of years, even though it had not been used, the patron would have been paying the carrying cost of it. Of course, he might find it much to his advantage, as I explained in my direct testimony, for us to carry in the rate base rather than to make an expenditure of a large sum of money through double decking or some reason like that which would be necessary had we not purchased the land when it was open and thereby had it available for expansion, when the expansion was necessary. If the

Trans.

Secretary accepts the contention of our real estate men as to value, it will be included in the rate base at approximately four times its cost to the company.

Q. And if the patron has been paying the carrying cost on this land during that period he will not only have to carry the cost but also now pay on the unearned increment, will he
1837 not?

A. Well, he will not be paying the carrying cost necessarily on $12,000 per acre at the time he purchased it. You must assume there that we have made an unreasonable return.

Q. No, I think if he has been paying the carrying cost on the cost he will have carried the land for the company.

A. Prior to this time our rates would have been the same whether we owned this property or not, as you cannot properly allege that he has been carrying the carrying cost on this land. Now, for the future, if you fix a rate which includes this land at the value we feel it is worth, obviously he will pay interest on that value the same as he does on all other parts of the yard which are used and useful in stock-yards operation.

Q. And if at some later time there is another rate hearing and the value of that land has gone up, it will then be included in the rate base, if our law is not changed, on the basis of its present value, will it?

A. When you adopt the reproduction method of finding cost that necessarily follows. Your reproduction method this time arrives at a value substantially a half of a million dollars
992 under what you found in 1930. Now, that is

Trans.

the case where the company stands to lose a half a million dollars because you picked a time of low production cost compared to 1929. The matter works both ways.

1838 (Witness continuing). I am not in a position to state how the reproduction cost compares with the original cost of all the structures. I could with respect to certain particular structures. I do not have the original cost of all the structures available other than as it is incorporated in one of Mr. Zelinski's exhibits. I could compare the original cost of the sheep barn with the cost of reproduction new. As long as the matter was brought up, I would like to add there, Mr. Zelinski having mentioned it, that that contract happened to be made by a Denver contractor at the time prices were going up. The deal practically broke him because it was under contract. We secured the barn for a very large amount of money under what it actually cost him to produce it or what it would cost had we elected to build the barn ourselves. The same thing is true with the new Exchange Building.

Trucking Increase.

1839 —It is true that the trucking business is increasing in Denver, and as a result thereof, we find that we have to make certain modifications of our pens and in our docks and do a certain amount of reconstruction work, and that to a certain extent livestock which originally came in by rail, and used the rail docks, no longer utilizes them, although we have not felt it at this point as much as they have at other points or to the extent that we feel we can
1840 give up any of our present railroad facilities.

The probability that the truck-in business will increase will result in certain depreciation by reason of obsolescence in certain parts of our property. We are endeavoring to avoid that as far as possible by proper management. That is, as I explained in my direct, we plan on using the present hog barns

Trans.

as additional sheep area and rebuilding a hog barn near the Exchange Building. Now the obsolescence we will experience there will of course be the loss of the pens, cattle pens, around and south of the Exchange Building. We will move the entire hog division from its present location to the proposed location, using the present hog facilities for sheep. I feel that prior to this time we should have provided additional parking facilities for trucks. The roadway into the present drive-in division has been very congested the past two years.

With respect to the land north of Race Court,
1841 taking 1934 for an example, due to the dryness of the season, while we dumped a substantial amount of manure on that area, I would not say that all of the vacant land outside of the feed lot was used; this being principally due to the fact that truck gardners purchasing manure, due to the dryness of the season, removed it rather rapidly. We have been going through a dry cycle. We must expect there will be wet cycles, and for that reason the prospective use in the future will be the same as existed four or five years ago when we found the vacant land in that particular area inadequate to take care of all of our manure that needed dumping. I cannot state offhand how much we put up. I believe I could ascertain for you the number of loads during the season. It might take a week or so. I know that we did not use the manure dock for manure last fall because, as I stated in my direct, we were saving that for or in the event of wet and stormy weather when we could not get onto the land north of Race Court and the wet or stormy weather did not occur.

In 1933 we used it practically to the same extent we did in 1934. 1933 was also a dry year. In 1932 we used it to a larger extent than we did in 1933 or 1934.

Trans.

1842 I have estimated that under normal conditions we would need ten acres in that area for manure dumping. We do not attempt to pile this manure, but drive in a dump truck, and that occupies a certain area. The next load is dumped as close to that as possible, but not on top of it. We have found it more economical to handle in that fashion than attempting to pile. The area actually covered in any one of these three years depends on the rate at which the manure is moved by the people purchasing it. I would estimate over a five-year period, which includes both wet and dry years, an average of ten acres so used. In 1934 and 1933, due to the rapidity with which it was moved, which was on account of the dry weather, I would estimate we used from five to seven acres.

We are able to sell all that we have available, provided we properly handle it so that the customers can remove it from the property. We do not lack and have not lacked for the past four or five years an outlet for such manure as we have available. The sale, however, depends on proper handling, so that it will be available to prospective purchasers when they are in a position to take it. We feel that we should have at least ten acres above Race Court available for this reason, and that if we did not have it, it would be necessary for us to purchase it elsewhere for such disposal. Manure Sales.

1843 The use we made of Pen 4212 during the past year is not a normal use during the entire year. That pen was used for the dumping of manure after the cattle season was over for the convenience of one of our larger patrons and with the understanding that he would remove it promptly. Had we needed the pen for livestock at that time, we, of course, would not have used it for manure. The pen was expressly built for large shipments of

Trans.

cattle or sheep during the heavy season. Our heavy season is over around the first of December. We used it for livestock up until about that time and then dumped manure in it for some time afterwards when there was no prospective use of it for livestock. By so doing, we lowered our operating cost, as it made a shorter haul to this pen than to the area north of Race Court. This, however, does not change our necessity of the land north of Race Court in any particular during the time when our manure production is largest.

MR. BOSWORTH: Mr. Examiner, may I ask Government counsel if they are attempting to impeach the testimony of their own witness, Mr. Christensen, who changed his report to indicate that this pen 4212 was not a manure dumping facility?

1844 MR. COOPER: I think his testimony was that it had been filled with manure and the manure had been cleaned out.

MR. BOSWORTH: Oh, no. Mr. Christensen is here. He can correct me if I am wrong, but as I remember his testimony, he came in with a change in his original report as made to show that that was not a manure dumping facility and was included in his used and useful land.

[redacted] MR. COOPER: The Government is making no contention that pen 4212 is not used and useful.

MR. BOSWORTH: He excluded all the other manure dumping ground, Mr. Cooper, except that around the manure dock in Zone 2 as not used and useful and it was our understanding that that was one of the purposes of his changes in his report, Mr. Examiner.

(Witness continuing). At the time pen 4212 was constructed we had a substantial movement

Trans.

of livestock from the south to the north during the spring. It was then used for these large shipments feeding at Denver. This movement has decreased to a certain extent. We now use it for some large shipments during the spring and for numerous large shipments during the fall of both sheep and cattle. We have a substantial movement of through sheep, part of which are yarded in the triangle south of the Exchange Building, and when that is filled up in the north end of the yard, we endeavor to keep all through sheep out of the regular sheep division. We used the pen last fall to yard Government cattle in off of the [illegible]. It is used during the fall for a period of from 2½ to 3½ months, and in the spring it was used for a period of around two months.

1845 The disadvantage of using it for manure is that we create the larger part of our manure when we clean the pen. We endeavor at this yard to keep our pens cleaned up and in good shape at all times, and I believe have a reputation of having the cleanest stockyard in the country. Now, all pens are usually cleaned at least once per week during the fall season. That means we have got to have a place to dump the manure. At the same time we are using pen 4212. If we use pen 4212 during the fall season for manure dumping, which we cannot, it would not be near large enough for that purpose without the use of a clam shell.

Including Government cattle, we had one of the heaviest movements of cattle in 1934 that we have had in recent years, although the Government cattle did not create much manure.

It is our contention that that part of the area which is now occupied by feed lots should be included as used and useful. Though we exercise no direct management control over those feed lots Feed lots.

Trans.

we say how they shall be used and who they shall be used by and under what conditions. They are under lease with certain specified understandings. I have not read the lease into the record.
1846 I would like to add this, however, that there is a very definite understanding with the party having this lease and operating the yard that he will not sell cattle down there unless he collects yardage fees, but that those cattle shall be sent to the stockyard proper. Now occasionally he has sold some cattle down there and he has paid us yardage thereon. I checked up for the month of January and February, I believe it was, and he paid us $84.00 yardage which goes into our general account, and of course it is not distinguished by an audit, for cattle sold in his feed lot.

The operator of the feed lot feeds cattle on contract, namely, he agrees to provide feed at so much per ton. I do not understand that he operates under a gain basis, that is, that the owner will pay him so much per pound for the cattle. He furnishes the feed and furnishes the labor and fattens the cattle, and then they are sold for the account of the owner.

The cattle fed on the feed lots north of the stockyards with whom this feeder competes and which yards compete with the Denver yards, are not forced to either market their cattle through the Denver yards or to pay yardage provided they are sold in
1847 their own yards. We feel that it is simply good business on our part to give these fellows some competition and it is simply a protection of our business.

To the extent that the cattle consume feed and get fat it is true that the fattening of cattle on these feed lots is comparable to the fattening of cattle on other feed lots or feed lots that the farmer

Trans.
might have, but the yard feed lot is not comparable to these other feed lots insofar as the regulations of the feed yard and their connection with the Stock Yard Company is concerned. By that I mean that the cattle sold on the yard feed lot move back into the Denver yards for selling, or if they are sold in that feed lot they pay us the same yardage as if they sold in the stockyards proper.

I cannot tell definitely whether the income which our company receives from the use of these feed lots equals the carrying cost of the property at the value which your appraisers have put on the land and which Mr. Zelinski has put on the structures, for the reason that in the past when cattle were driven in at that end of the yard, we have not kept a check as to whether they come from this feed lot or from other feed lots. We know, however, that the yard
1848 has been full of cattle, that there is rather a rapid turnover, and have reason to believe that if we could allocate the revenue received in the stockyards proper due to this feed yard, that it would carry the cost of the property or substantially carry it.

If the cattle from the feed lot come down into the regular yard for sale, the Stock Yard Company at that time furnishes to them the same services and facilities that it furnishes to other cattle. The only point is that at the other yards competing with this yard and with the Denver stockyards, they are not required to move back through the yard, and frequently do not. I wouldn't say that our operating expense is increased in any way by the handling of these additional cattle that come from our own feed yards. We haven't found it necessary to increase scale facilities or labor costs and so forth on account of these particular cattle. For that reason if they were compared to handling at some other feed yard, loading up and

Trans.

moving to other markets, whatever revenue we receive from that source is practically net.

1850 MR. BOSWORTH: Let the record show, please, that through the courtesy of Government Counsel and because of the fact that the next witness must leave town in the very near future, we have been permitted to interrupt the cross examination of Mr. Pexton, and will put Mr. Julius Wolf on the stand.

JULIUS WOLF, a witness for the Respondent, after being sworn, testified as follows:

Direct Examination.

My name is Julius Wolf and my home is in Denver, Colorado. I am in the livestock business; buy and sell and grow and fatten cattle. Our firm name is Wolf Brothers. Our offices are at The Denver Union Stock Yard and I have been in the livestock business about thirty years.

Large scale operations.

1851 In 1934 and 1935 we handled approximately 26,000 cattle through the Denver Stockyards. In 1933 it run a little larger, probably 29,000 cattle. During the past five years I would say that we have handled a yearly average of about 30,000 cattle through the Denver yard. We feed between 4,000 and 5,000 head annually on our feed lots and farms near Albion, Nebraska, in Boone County. We grow our cattle on our ranch 40 miles northwest of Albion in Wheeler County, Nebraska. We grow about 1,500 cattle annually at that ranch. We
1852 have no other ranch. In addition to the cattle handled at the Denver office, fed at Albion and grown on our ranch in Wheeler County, we buy from 10,000 to 15,000 cattle annually direct in the country from the ranchers. Summing up our dealings in cattle for a year, it would be about as follows:

Trans.

An average of about 30,000 head through the Denver office; around 10,000 in the country direct and we feed 4,000 to 5,000 and grow around 1,500. Of course it varies at times, some years we handle more, sometimes less, but I judge that would be about the average amount of business we do.

Q. Now, as to your buying operations at the Denver Yards, will you describe your business in detail, for example describe your operations on a typical day; what do you do and how do you conduct your business generally?

Trader Operations of Wolf Bros.

(Witness continuing). Well, take, for instance, on a Monday in the fall of the year when we have a run of 12,000 or 15,000 or 20,000 cattle in Denver, we get out in the morning and buy cattle with the expectation of re-selling some of them right there in the yards and otherwise we have a clientele, we have a lot of friends and customers who depend on us for their cattle and we know just about what class of cattle these people want and we try to buy
1853 that class of cattle. After we get them bought, a certain amount of them, say 1,500 or 2,000, or whatever we may buy, we step to the telephone and call up our fellows that we think will need the class of cattle that we bought that morning, and try to sell them to them and ship them out the same day if possible.

A good many people come in from the country and buy from us.

We buy carloads and we buy odd lots. The carload lots we try to keep intact and a great deal of these cattle we buy we do keep intact, that is, as to weight, and when we sell these cattle we sell them on the original weights, on the weights we bought them at, that is called the original scale ticket.

No reweigh in many instances.

Trans.

Odd lots reweighed.

The odd lots we take down to our alley, even them up, sort them up into carload lots and sell them that way. If we haven't got anybody to buy these cattle, as a rule we send them out; we will call somebody up and tell them we have a load of
1854 odd cattle, evened up, flat, if the cattle are flat; that means they have no freight, no freight benefit, and then we ship them out. In other words, we do our best to get rid of them as quick as we can. These cattle, these odd cattle, have to be weighed because we get them in odd lots and we sort them up and we cannot preserve the original weight because we change them around and sort them up, take the good ones out and put the poor ones together and the good ones together and make loads that way and that is the reason we have to reweigh these cattle.

Chiefly stockers & feeders bought by trader.

We buy principally stockers and feeders but we buy all kinds of cattle, practically all kinds. We buy some that have flesh on them and some that have not. We buy cattle that is partially fat and in some instances we buy fat cattle also. An animal that is partially fat is called a two-way animal, that is an animal that will do for further feed and also probably fat enough that some of the packers would buy them, but they need further feed to make them thoroughly matured animals, that is, prime
1855 beef. When we buy fat cattle we are competing with the packers. We buy fat cattle quite frequently. In other words, if we think that packers are trying to buy these cattle too cheap and we think we can make a profit on them by buying them and preserving the freight and shipping them on, why we buy them. We are not always successful; sometimes we get left.

Competition with Packers on fat stuff.

Knows needs of clients.

We don't buy on order. We have no orders in our pockets. When we go out in the yards we buy these cattle on our own judgment, and if our judg-

Tran...

ment is bad, we lose money. If it is good, why, we make a profit but we have an advantage having a larger acquaintance than lots of people that depend on us for their cattle, and knowing what class of cattle these people want, we are in a position to buy intelligently enough so we can sell them at a small profit most of the time. Of course, there are times when we ship these fellows cattle after we tell them what they are, and they have taken
1856 our word for it and occasionally we get a kick telling us the cattle were not as good as we told them we would send, and, of course, then we would either have to, if they refused to take the cattle, make a concession or move the cattle some place else and try to get rid of them. If we have to do that and if they are West of our place, we send them to Albion, or if they are East of there we find another customer or put them on the open market or take our medicine. If we put them on the open market we use either Omaha, Kansas City or St. Joe, whichever is the closest.

We take title to everything we buy; the commission man looks to us for the money. Sometimes
1857 we buy more than our outlet is. Then we try to find customers. I, at times, in the fall of the year sit up until one or two o'clock in the morning selling cattle, especially if we have bought more than we could use, trying to sell them, trying to find customers and trying to find places for them and a good many times we succeed and sometimes we don't.

Trader profits.

With respect to profit, we generally try to get 10 cents a hundred profit on the cattle we buy and sell. That would be a dollar on a thousand-pound steer, but we don't get but few thousand-pound steers nowadays. We buy chiefly stocker and feeder stuff, which is lighter, so our average profit is considerably less than a dollar an animal.

Trans.

1858 I think the most cattle we ever bought in a single day on the Denver market is 3,500 head. Our average would be considerably less than that. Our books this year show that for the year 1934-35 20% sets on the Denver market more than 24 hours. The other 80% move out promptly because it is every trader's aim in the yards to get rid of the cattle just as fast as they possibly can, and as 99 per cent of the people that buy cattle want the original weights, why, it is to the advantage of everybody to get them out of the yards as fast as possible. Even where we have an excess amount we still try to get them out promptly. That

80% of trader purchases moved out in 24 hrs.

1859 is why I said previously that if we do not get rid of them during the day on Monday I would be busy all night finding places for these cattle and trying to get them out as early as possible on Tuesday.

17% Re-weighed.

Our books show that 17% of the cattle that we have handled in the year 1934-35 were sold and re-weighed out of our alley. However, the bulk of the cattle, I would say 80% of our cattle, are not weighed at all. They go out and are sold on the original weights. That part which moves out on the original weights is sold largely to people who are, you might say, our established clientele. The 17% of re-weighs are sold to the new purchasers,—those who are not at the instant our steady clientele, who pick up odd lots that have to be re-weighed. The other 3% are also sold out of our alley to people who casually come in, but move out within the

1860 twenty-four hour period. That is, out of the 20% that is not sold to our established clientele, there is probably 3 or 4 per cent of that that will be sold without re-weigh; the other 17% will be weighed.

The hot-shot train starts loading about 1:30 or 2 in the afternoon. Frequently we are weighing on a Monday, if it's busy, until rather late. Sometimes we buy cattle in the morning and do not get

Trans.

them until evening; consequently we can't get them out until the next day on the hot-shot. That frequently happens with the ordinary feeder buyer. Lots of the ordinary feeder buyers, the farmers that come in, keep their cattle there three or four days before they move them out, because lots of them want them branded, dehorned and dipped, and lots of times they have to get them inspected in order to get a loan on the cattle and it takes sometimes three or four days before they can get their cattle out.

Trader receives less service than farmer.

1861 I don't think that we get any better service than the farmer, in fact, I think the farmer gets the better service. For instance, when our cattle are weighed, we have our own men at the scales that have to drive these cattle to our pens, where, if a farmer buyer comes in, he gets—the Stock Yard Company receives his cattle at the scales and yards them for him, takes them down wherever he wants them, locks them up, takes them to the branding chute for him; in fact, I always said that they always get better treatment than the yard traders,—people that are there every day. The farmer can leave his cattle in the yards as long as he deems necessary without any additional charge as long as he pays the feed bill or as long as he pays the hay bill. He can keep them there two weeks, I don't believe the Stock Yard Company would care. If we keep our cattle there we have to pay the feed bill and furnish our own men to feed our cattle, whereas the stockyards furnishes the men to feed the farmer's cattle.

Allocation of pens to traders.

When I said a moment ago that "our men drive them to our pens" I mean by that the pens that have been allotted to us by the Stock Yard Company. We have no lease on those pens and they can take them away from us and do take them away from
1862 us when they need them and make us yard our

cattle some place else, in a good many instances, especially where there is a large run. This 17% of the cattle which are re-weighed include cattle that come in in odd lots, that is, truck-in cattle, and just what we call a plain, common set of cattle mostly.

The truck-ins do not have any freight benefit so they can be sorted backwards and forwards in any way or any way they want without any loss of freight benefit.

Trader preserves freight benefit.

In a great many instances the yard trader, such as I am, is able to preserve the freight benefit when the commission man either doesn't or is not equipped
1863 to do so, for instance, take a feeder buyer who comes in, we will say, to the Denver Livestock Commission Company; the Denver Livestock Commission Company has got two loads of cattle, we will say, for instance, from Pagosa Springs, and he would say to the salesman of the Denver Livestock Commission Company, "Now I want to buy these two loads of cattle." The salesman will tell him, "All right, I will sell them to you." "But," he says, "you have got four cattle in each pen that I cannot use, that I don't want." Well, the salesman is up against it. He either, if he takes these four cattle out of each pen, he kills the freight. The freight is no good. This man would have to buy these cattle on the flat basis, while on the other hand, if we traders, we go in and buy these two loads of cattle from the Denver Livestock Commission Company, we go down to John Clay & Company, another commission firm, who probably have two or three loads of cattle from the same point of origin, Pagosa Springs, also, that we can buy, and we may go up to Drinkard & Emmert and they may have two more loads. Well, there will be seven loads of cattle, that is, seven loads of cattle from

Trans.

Pagosa Springs, we can sort and mix any way we want to, as long as we ship the same cattle out. Now, this man comes down to our alley, we can sell him these two loads of cattle he wanted to buy from the Denver Livestock Commission Company, and take eight cattle out of the total purchases from the same point, just as good cattle as the ones he wanted, two loads he bought from the Denver Livestock Commission Company, and that way make him satisfied. He gets just exactly what he wants and the man that shipped these cattle in got the benefit of that, for the reason that
1864 we could pay 20 to 25 cents a hundred more for these cattle because we have the freight benefit, but if the farmer would have bought these cattle and the Denver Livestock Commission Company would have taken out these eight cattle, then he would have killed the freight and the buyer would have had to buy these cattle flat. That occurs very frequently.

Trader can pay higher prices.

1865 There may be a load of off cattle, what we call off cattle, in the seven or eight loads that would give us seven loads of good cattle and one load of cheap cattle, and there are always customers for cheap cattle, people that want to buy nothing but plain and cheap cattle, and then we have customers, people that come in and that absolutely won't buy an off steer; they just want good cattle and we sort these cattle up that way, and we still have the benefit of the freight on that one off load because they all originated from the same point. The result is that we are given an incentive to buy many loads in order to try to get a load of off cattle to preserve the freight.

The situation that I have just described is typical of the traders on the Denver market. However, it is just the larger traders that do that kind of 1007
business.

Trans.

1866 The little fellow is just as necessary in the yards in Denver or any other yards as the bigger traders, because on a busy day they just don't get time to get around and buy these small packages of cattle. By a package, I mean four or five, or six or eight.

Small trader equally essential.

Our aim is to buy the carloads first, and then if we get around to the little, to the small lots, we try and buy them, but the little fellow makes a specialty of those small odd lots. They haven't got the capital to handle the large lots and they confine themselves to the smaller. The little fellow is just as anxious after he gets them bought to sell them as anybody else, but of course buying in small lots, it takes a longer time, and it takes them longer to get carloads together, although there is quite a few people that come in nowadays that buy just a truckload of cattle and that is their principal trade, and once in a while they get a carload and ship them out and sell them out.

Handles small shipments.

1867 In other words it is the little fellow on the market who very largely takes care of the truck-outs. They are specialists in the cattle trading end of it. We have traders who do not buy anything but cows and those who do not buy anything but stock calves and some that buy nothing but butcher stuff. Butcher stuff is cattle with flesh on them. They are not actually as high grade as the fattened cattle, not quite prime beef.

And there are sheep traders in the Denver yards. I am not familiar with the people who are. I don't get over there very much but I know there are sheep traders there.

I really do not know whether there are any exclusive hog traders or not. They have on other markets but I don't know whether they have them in Denver or not.

Trans.

1868 The various yard traders compete with other traders and with other buyers as well. Everybody is competition out there. Everybody is trying to do as much business as they possibly can. They are all out for cattle and that is what makes the market. Naturally competition tends to raise the price and stabilizes the market. There is absolutely no agreement, expressed or implied, or any understanding of any sort between the traders that if one trader bids on livestock other traders will not bid on it. It is just dog eat dog out there, everybody for himself.

Active Competition.

Raise price.

Cross Examination.

Yes, I have been in business for thirty years. I wouldn't say that I have been a trader on the yard for thirty years, though in a sense I have. I have been coming to Denver over twenty-five years, buying cattle on the Denver market and have been registered as a yard trader under the Packers and Stockyards Administration, I think, for four years.

I own and operate my own ranch in Nebraska. I did not get the ranch as a result of the profits from my trading operations.

1869 At this point Mr. Bosworth objected to the question that elicited the information in the last sentence as incompetent, irrelevant, immaterial and unfair and asked that the witness' answer be striken from the record. Motion to strike was denied.

1870 (Witness continuing). Until four years ago I was not registered as a yard trader nor was I a member of a firm that was registered more than four years ago, but I had a friend in the yards that we let have the money to incorporate his firm.

My own firm, called Wolf Bros. is now doing business as a yard trader. Sometimes in the fall

Trans.

we employ six or seven people, and when the season gets dull, we have one or two. Of those people three buy cattle.

1871 Yes, on the average I buy about 30,000 cattle at the Denver yards in a year. We sell those cattle to different parties in the Corn Belt and in the yards. We don't get out into the country and get orders, we don't go any place, we do the bulk of our business over the telephone. A certain per cent are sold over the 'phone and a certain per cent in the yards. We do not turn them over to a commission firm to sell; we sell them ourselves.

We sell about 80% on ticket, as it is called. When we sell on ticket we intend to make a profit of about 10 cents a hundred.

1872 The average weight is around 700 lbs. If we sell on ticket the same day we purchase the cattle we do not feed the cattle, but we always keep hay in the pens and put the cattle in them. However, if they are not sold on ticket the first day, we feed them and then sell them on the ticket. Where we have to feed them we still make only 10 cents a hundred, so the feed charge comes out of the so-called profit of 10 cents.

80% are sold on ticket, and according to our
1873 books last year 17% were sold on actual weight. We feed that 17% and give them a fill. We do not always make a profit on that fill as well as on the weight. In fact we do not more frequently than we do. We fill because the cattle have to eat and on eating they naturally fill. If anybody eats they fill. We feed them just as light as we possibly can.

I spend practically all of my time in the fall of the year at the yards. I don't go up to the ranch. I have a brother who attends to that. He sells
1010 1874 from the ranch. Yes, I stated in my judgment the

Trans.

farmer gets as good if not better treatment than the trader; in some instances better. The farmer does pay a yardage charge and so does the trader. If we ship cattle to Denver we pay a yardage charge, but of course we are then shipping in as producers. However, if I buy some cattle on the Denver Union Stockyards this morning and keep them in the pen until tomorrow morning, I do not pay any yardage charge.

When we get hay from the stockyards the stockyards employees do not break up the bales and feed it out to the cattle. They simply put it on the fence and we break it up and feed it. When the grower ships to the yards the commission house that he ships to has the hay loaded on the fence and the employees of the commission house break it up and feed the cattle. I don't know whether there is any different rate for hay that is put on the fence and hay that is put in the pen and broken up.

1877 If I, as a trader, buy livestock today and keep them in the pen for two or three days, I don't pay any yardage.

Q. Now, there is, I believe, some mention in the record about a so-called strike out here among the traders, were you on the yards at the time the so-called traders struck?

This question was objected to as improper cross-examination, and the objection being sustained, the Government thereupon made the witness its own.

(Witness continuing). I was not in Denver the day the strike started. As far as I know, there wasn't any strike.

Q. Did the traders lay off from their yard operations for a few days?

A. Yes, I think they did. The fact of the matter is, if I recollect, at that time when this

Trans.

question came up as I understood that they were to charge yardage to the trader and not on cattle that was bought on order, they were not to be charged any yardage. Well, I didn't

1879 have orders myself and I don't know about the balance of them, so I couldn't buy any cattle; as I didn't have any orders I couldn't buy any cattle.

MR. MILES (continuing). Now, did the stock yard officials try to discourage the trader from this strike?

A. I don't know.

Q. Never heard of it, did you, of their trying to discourage anybody?

A. No.

I cannot offhand state the profit I made per head on the approximately 30,000 head of cattle, of which 80% were sold at the Denver yards. The profit was very small, in fact, there has not been any profit in the past two or three years. Notwithstanding that fact I am still doing business as a trader at the Denver yards. I don't know anything else to do. I still have my ranch.

Cross-examination by Mr. Bosworth.

If I remember correctly the Yard Company did notify the trader that as of a certain date there would be a yardage charge imposed against the traders in their purchases. The Yard Company did not, to the best of my knowledge, ever tell me or any other trader that we should not pay this extra yardage charge.

1881 *Re-direct by Mr. Miles.*

The Stock Yard officials never told me that their feelings would not be hurt if we went on a strike, nor did they ever say anything like that. I think

Trans.

it was just the opposite, if anything. The fact of the matter is that I do not remember the circumstances very much any more, but as near as I can remember, and as far as I knew, the Stock Yard Company never made any suggestion or anything like that to us. The Stock Yard officials never
1883 said anything to me in any way indicative of their attitude that there should or should not be a strike or a laying off in the trading, nor did they say anything of that nature to any other trader out there to the best of my knowledge.

1884 *Cross-examination of Mr. Pexton resumed by Mr. Cooper.*

I find that I was in error with regard to our taxes and their method of payment. We make monthly reserves each year for our taxes that same year. We usually know approximately the amount of our taxes for the current year by the end of that year and then make adjustments at the end of the year so that the amount in the reserve will equal the amount of taxes for that year which we will pay the following year as they are due. Our 1934 taxes totaled $33,082.19 and were reserved for in 1934, although being paid in 1935. We are not yet informed what our taxes will be for 1935, however, we have reason to believe they will be substantially the same as in 1934, or around $33,000.

Profits from Feed at show included in income.

With reference to the question of yardage on livestock sold on the Stock Show property during Stock Show week and the feeding of livestock fed during Stock Show on that property, our gross profit on grain, hay and bedding furnished to livestock on the Show property during Stock Show week in January, 1935, was $1,266.51. This money was paid to the Stock Yard Company and went into the revenue of that Company, being turned over to the Show Association in no way.

Trans.

Stall rents are charged for livestock exhibited on the hill. This totaled $2,289 in the January, 1935, Show. It was collected by the Stock Yard Company but allowed as a credit to the Show Association and used to pay the labor and material bill of the Stock Yard Company against the Show, which usually totals about $3,000 per year.

Income from Fat livestock and bulls sold at show is included.

The fat livestock exhibited on the hill, this being mostly single entry livestock, is sold in the fat auction in the stockyards proper, yardage being paid directly to the Stock Yard Company and going
1885 into the general Stock Yard Company revenues. Yardage of bulls sold on the hill is collected by the Stock Yard Company direct from the seller and goes into general yard revenues. There is a ring charge for livestock sold in the sales pavilion on the Stock Show ground, which revenue goes to the Show Association.

Bedding sales due to show.

During the month of January, 1935, the Stock Yard Company sold a total of 6,688 bales of straw in the stockyards proper and on the Show grounds. Of this, 1,870 bales was sold on the Show grounds. 4,812 bales were sold in the stockyards proper, and the profit on this straw of 45 cents per bale, or $2,168.10 was collected directly by the Stock Yard Company and went into their general revenues.

There was also a profit on grain in the stockyards proper during the past Show week of $321.62, which was collected by the Stock Yard Company and went into their general revenues.

This stall rent of $2,289.00 did not arise entirely out of the rental for the use of stalls which have been included in the property conceded by the Government to be used and useful. The Stadium con-
1886 tains a large number of horse stalls which are used during the Show week and the revenue from which is included in this $2,289.00. I do not have

Trans.

any way of segregating the figures at this time. I would not care to say how much it would be; I believe I had better ascertain the break-down of the $2,289.00. All of the show horses are kept in the Stadium during the Show week and that is usually fairly full during Show week and our higher rents apply there. Since you want that information I will endeavor to secure it.

The yardage on the livestock which was sold up on the hill, that is, the pure-bred sales, were carried into the other yardage, and we have not kept our records in such a way that we can tell whether the yardage from the pure-bred bull of $1.00 a head is derived from sales in the yard proper or up on the hill.

1887 I have that information you asked for regarding prices. I have the Bureau of Agricultural Economics, Market News Service Market Reports for November 12, 19 and December 3rd of 1934, and January 7, 14 and 15 of 1935, which carries the Denver, Omaha and Kansas City livestock markets for those days. The report of November 12th shows the receipt of 13,600 commercial cattle at Denver. The Denver market for that day reads "*most of the* good stocker and feeder steers went at $4 to $5, with several loads at $5.10 to $5.15. Top yearlings reached $5.65, and two-year olds and other yearlings made $5.50." The report for Omaha the same day reads: "stockers and feeders slow, steady, medium to choice steers, $2.75 to $5; choice stock fat calves $5.50." The report for Kansas City the same day reads, "stockers and feeders opened slow, steady to easier, bulk, early $2.75 to $4.50; choice 527-*pound steer calves* $5.35." The latter is what we would call top yearlings at Denver.

Comparative prices before and during Show from government records.

1888 The report for November 19th shows 10,200 commercial cattle at Denver, and reads as follows:

Trans.

"Two loads of around 1,175-pound feeder steers reached $5.75, while lighter weights, including yearlings, were taken at $4.75 and $5.50. Other steers brought $4.50 down." The Omaha market for the same day reads as follows: "Stockers and feeders, steady. Medium to good steers $2.75 to $4.50. Choice yearlings held above $5.00." The Kansas City market for the same day reads as follows: "Stockers and feeders slow, steady to weak. Bulk $2.75 to $4.50. High quality 336-pound steer calves $5.75."

The report for December 3rd, 1934, reads as follows: "Denver receipts, 4,600 commercial cattle. Several loads of good medium stocker and feeder steers went at $3.35 to $4.50, with some yearlings held around $5.00 unsold late. There were two cars of fleshy 1,210-pound feeder steers at $5.50 straight." The Omaha market for the same day reads as follows: "Stockers and feeders scarce, steady. Medium to good steers $2.75 to $4.00. Yearlings $4.75. The Kansas City market for the same day reads as follows: "Better grade stockers and feeders fully steady, others slow. Few loads choice stockers up to $5.00."

The Denver market for January 7, 1935, reads as follows: "Receipts, 1,800 commercial cattle. Stockers and feeders went generally at $3.50 to $4.75." The Omaha market for the same day reads as follows: "Stockers and feeders scarce, active, strong. Bulk $4.00 to $5.50, few loads to $6.10. The Kansas City market for the same day reads
1889 as follows: "Stockers and feeders mostly steady, supply liberal. Bulk $3.75 to $5.50. Choice yearlings $5.90."

Increased Prices due to Show.

The report for Monday, January 14, 1935, this being the first day of the Denver Stock Show, reads as follows: "Stockers and feeders enjoyed one of

Trans.

the sharpest single advances on record. One load of steers around 1,050 pounds went out at $9.00. There were others with bids of $8.00 to $8.50. Three cars of two-year-olds made $7.90, and others sold at $7.75. There were any number of loads at $7.15 to $7.25 with numerous loads at $6.50 to $7.00." The Omaha market for the same day reads as follows: "Stockers and feeders active, strong, to around 25 cents higher. Bulk $5.00 to $7.00. Fleshy feeders $7.35." The Kansas City market for the same day reads as follows: "Stockers and feeders in liberal supply, steady to 25 cents higher. Bulk $4.25 to $6.25. Choice steer calves $6.35."

We do not wish to leave the impression that the $8.50 and $9.00 cattle sold on January 14th were comparable to those sold on January 7th at from $3.50 to $4.75. The latter cattle would be more comparable to those which sold at from $6.50 to $7.25 on January 14th.

The Denver market report for January 15, 1935, reads as follows: "Stockers and feeder steers were in moderate supply and sold readily at steady to strong prices, following the unusually sharp gain of Monday. One load of feeder steers around 750 pounds made $8.25. Other loads were taken at $6.60 to $8.00." On the same day the Omaha market reads as follows: "Stockers and feeders active, strong. Medium to choice steers $5.00 to $6.50
1890 Fleshy feeders $7.25 and $7.45. The Kansas City market for the same day reads as follows: "Stock ers and feeders steady to strong. Choice stockers and light feeders up to $7.00."

Expansion of facilities.

With respect to Respondent's Exhibit 19, which was the detailed blue-print showing the proposed cattle pens which are to be an extension of the yard north of Race Court, we do not, at this time, have any definite date in mind as to when actual con-

Trans.

struction of these pens may be expected to start. That depends entirely on the general recovery from the depression and on the recovery in our locality from the drought, as well as other conditions mentioned in my direct testimony. A favorable decision in the West Bound Meat case would, we feel, immediately increase our hog receipts and necessitate the moving of the hog facilities to the proposed location. It would not necessarily follow that we would immediately extend across Race Court in the event of that change, as the building of these new pens would depend on our cattle business and the necessity for additional pens. We would first cut up the three large pens at the north end of the yard. It has never been the policy of the management of the company to build additional pens or expand until a well founded need for them occurs.

New Hog Facilities.

1891 With respect to the proposed new hog house, we feel the construction of a new hog house is more imminent than construction of additional cattle pens, for the reason that our sheep and hog receipts have been increasing while our cattle receipts have not increased the same way, although they have not decreased to the extent the total receipts indicate, either the number of sales or space required. We have felt some new construction should be made in the hog division for the past two or three years, but it has been delayed on account of the depression, on account of the corn hog program, on account of the drought and awaiting to see the results of the West Bound Meat case. I do not wish to name a specific date for any of these improvements because that is a question of management and for decision by the president of the Company and the board of directors, who will take all matters and conditions into consideration when making their decision.

Trans.

The new hog house hasn't reached the blue-print stage yet. However, we know substantially the kind of barn we wish to build.

1892 I believe I do recognize the copy which you are handing me of Respondent's Exhibit 38 introduced at the hearing held in 1930. The plans of that exhibit are somewhat similar to the plans which are shown in Respondent's Exhibit 19, being proposed cattle pens in each instance, and cattle pens not varying in size to any extent. The construction indicated on that exhibit has not materialized, largely due to the depression and the feeling on our part to wait and see what was going to happen rather than go ahead and spend a hundred thousand dollars or so and find ourselves in bad condition financially. I would like to state that when we introduced this exhibit in 1930 we actually felt, the way our cattle business had been expanding, that these cattle pens would be built in the near future and I still feel they would have been had it not been for the economic depression.

1893 Whereupon Government Exhibit 54 was offered and received in evidence.

Government Exhibit 54 admitted.

With reference to Zone 6. It contains a roadway extending *from* 46th Avenue to the south of Zone 4. The balance of the zone is now being filled with dump material from the city, and everything that is not inflammable is dumped in this locality. The material which is being used to fill that zone is costing the stockyards nothing.

Zone 6 in part being filled.

1894 With reference to the subway on 46th Avenue under the Burlington, railroad men have been out to see us about this. We understand the proposal has been recommended to the Federal Government *under the PWA*, I believe it is, or at least one of the developments and uses of the three or four billion dollars the President is going to use for grade

Trans.

crossing elimination and other work. It has been selected as one of the most important, as the location of one of the most important needs for a subway in Denver. If that subway is constructed along the lines that we have suggested it will give access to the stockyard property. We do not feel that the present access is sufficient for the needs of that location. I do not feel that the access to the upper end of our property or to the Exchange Building is near all that could be desired. We are forced to use the C. & S. Railroad right-of-way south of the Stadium property and the C. B. & Q. right-of-way from the C. & S. right-of-way to the Exchange
1895 Building. The railroads comment and complain of this at times and do not wish a condition to be created whereby use will create ownership. I believe we are faced with the proposition that either of these roads might be closed at any time.

As to a line of trucks standing on streets and the necessity for parking space, I do know the attitude of our local people here and I do know that from an operating standpoint, we could not permit a long line of trucks to stand from our unloading chutes up to 46th Avenue without interfering with other traffic and other yard operations, including movements from Swift & Company and I am sure the city authorities would object to a line of trucks standing on 46th Avenue and would expect the Stock Yard Company to provide some point where these trucks could stand awaiting their turn.

Zone 5.

With respect to Zone 5, I testified that the Yard Company is contemplating the establishment of facilities to provide for the shearing and feeding of sheep on this tract. I believe the development will depend to a certain extent upon the outcome in this case and upon the result of the establishment of transit at the Missouri River. We do not doubt
1020 in our minds at this time with the improved price

Trans.

of wool, that it would be a good thing for us to do. We do know, however, that unless we can allocate
1897 a certain part of the yardage in the stockyards proper, that is the revenue from that yardage to that facility if and when built, that it will not be self-carrying for this reason. These lambs may shear at any eastern feed yards. Feeding costs at those points on account of their being in the Corn Belt, are less than they are at Denver, because when fed at Denver the corn must be hauled from the Corn Belt to Denver. In meeting the competition from these other yards, we will be compelled to sell our feed substantially at cost and there will be no margin of profit to carry the property. We expect to be able to sell the lambs after they are shorn on the Denver market, receiving 8 cents per head yardage and our profit on the investment and a part of carrying cost will necessarily come from that source. Now if we are prohibited by the Secretary of Agriculture from having any facility in our rate base which contributes to the general prosperity of the yard our judgment may be changed for that reason. That is, it would not be good judgment on our part to have outside facilities which contribute to the general prosperity but which are operated at a loss if we cannot allocate a portion of the yard revenue to that facility.

At this point the Government produced a blue-print which was introduced in the 1930 hearing and identified as Respondent's Exhibit 37.

(Witness continuing). I have seen that document before. It covers those plans which were presumed to develop on Zone 5. None of these improvements have been made since the date of the 1930 hearing.

1898 Whereupon the blue-print designated as Government Exhibit 55 was offered and received in evidence. Gov't. Ex. 55 Admitted.

Trans.

1899 Due to the policy of our company in purchasing large quantities of hay in the fall, the northerly end of Zone 4 is used for hay storage purposes. We have the hay barn, which is indicated on Government Exhibit 8 as Y-1 on that tract. During the fall of 1934 in that particular zone we stacked approximately 900 tons of hay and straw outside. The hay is just stacked up and covered with a tarpaulin. We had one long stack covering the area designated Parcel 81 south of the roadway. The stack completely filled that particular area. We also had a stack of straw just west of hay barn Y-1.

Hay Storage.

The docks at the westerly end of the sheep barn are on Zone 1 but contiguous to Zone 4. They are
1900 used for the loading and unloading of sheep and hogs mostly. They are used both for consignments of sheep and hogs which are being consigned to the market for sale and for through shipment. Most of the sheep unload on that dock and are consigned to the market for sale. We also unload some hogs there consigned direct to the packers and through hogs which are watered in the chute pens. We endeavor to unload through sheep on the U. P. dock or the Burlington dock for the reason that they are yarded in either end of the cattle yard, that is, during the busy season. At this time of the year if we had a car of through sheep, it would probably be yarded in the barn.

River Easements.

The easements on Zone 4 follow along the channel of the river and cover a width of about 50 feet, although about half of that width is from the slope at the top of the bank to the bottom of the river. The Yard Company at the present time is using it for roadway purposes and for sewer outlets. That part of the easement which is now being used as a roadway passing through Zone 4 would extend

Trans.

from a point along the river about opposite hay barn Y-5, at which point the roadway would be entirely on the easement, south to a point about
1901 opposite the Swift & Co. line. From there on south the road swings back adjacent to the railroad tracks. There might be one point in there where the road is off of the easement, all or part of it.

Railroad Trackage.

We feel that all of our railroad tracks, including those in Zone 4, and the land they occupy, is a facility used and useful in the handling of livestock in commerce, and therefore should be included in the rate base. They were built primarily to handle livestock. We will endeavor to get all we can from the various railroads handling.

It is true we feel that the 50-foot right-of-way owned by the U. P., which is at the westerly side of the pen area in the cattle division and divides the cattle division from the sheep and hog barn which goes through the heart of our yard, is unfortunate from our standpoint and increases our operating expenses. As the yard has been built and as it is now laid out it is doubtful whether any changes would be made at this time even if we
1902 owned that right-of-way instead of the U. P. However, if we had retained ownership to the right-of-way originally and had not sold it to other people, I do not believe there would be any tracks or roadway through this particular section, but that the layout of the yards would be entirely different. Because of this condition, we have a long narrow yard, which makes operating expenses higher, whereas if the right-of-way was not down through there, we would have a wider and more compact yard. When our land witnesses testified relative to this fact they were considering the land as it is with all the improvements stripped off and with the other service. Now, if we had a square yard 1023
instead of a long narrow yard, we would undoubted-

Trans.

ly have railroad access to it, which would be just as good and desirable as this particular right-of-way of the U. P. At this date we could not make what I would term material changes in our yard by securing ownership of that property, but if we had owned it originally, we would have a very much wider yard and probably would not have the Swift and Armour plants in their present locations.

1903 It is true that the company originally operating the yards owned most if not all of the land now occupied by Swift and Armour. The grant to the U. P. was made in order to get that railroad company to build into our property. Now obviously any railroad would be glad to build into our stockyards under its present size, but fifty years ago, when the yard was just starting, is an entirely different proposition. We had not developed much business and it was entirely different getting some railroad to expend considerable money to serve us.

1904 As a result of the Stock Yard Company's leasing its tracks to the carriers, the carriers are enabled to deliver the livestock direct to the docks of the Stock Yard Company. That is, by virtue of the leases they have access to the docks and that was, of course, their purpose of making the lease.

1905 I wouldn't say that it was the major consideration because prior to that time they had been reaching the same docks over tracks for which they had been paying nothing, and it wasn't a case of reaching any new facility. I happened to be with the railroads at that time and I discussed the matter from a railroad standpoint with various executive officers of the railroads. Now, they had been using the tracks practically free for many years, and they felt that such use in the past created a more or less right to use in the future, and they were very, very reluctant to make the lease.

Trans.

However, the Stock Yard Company was in a position if it so desired to deny them the use of those tracks unless they paid for them and the railroads were under the duty to deliver the livestock which was consigned and in getting the lease they did get access to our docks and chute pens and were thus able to make delivery.

The Stock Yard Company has an understanding but no written agreement with the carrier to perform the actual loading and unloading services for which the carrier pays to the Stock Yard Company
1908 a fee. That charge at this time is $1.00 per car. I would like to add that while this is paid to us directly by the railroads, because of our particular condition here and our transit arrangement, in effect from 60 to 65 per cent of the money is actually paid by the producer himself and not from the freight charge of the railroad for performing the service. That is the decision of the Interstate Commerce Commission providing that where transit is granted, the railroad need not absorb the unloading or loading expense. Now, some other stockyards have raised their charges. For example, on a double deck from a dollar to a dollar and a half. About 92 per cent of our sheep are transited here. If we raise that rate at Denver from a dollar to a dollar and a half for every movement, or from two or three dollars for the through movement, it means raising the out-of-pocket cost for loading and unloading on transited livestock of the producer a dollar a car or fifty per cent. Our chute facilities, unloading facilities, are, in a major sense, purely producer facilities which are paid for by the purchaser as a separate charge and not in the local or
1907 through freight rate. That is due to the transit arrangement. Livestock which is consigned to Denver and sold at Denver and not re-shipped on 1025
through billing, on such livestock the carrier absorbs

Bulk of loading charges paid by shipper.

Loading and unloading facilities are producer facilities at Denver.

Trans.

the loading and unloading charge. That amounts to about 20% of our railroad receipts. As I read the decisions and the Interstate Commerce Act on shipments consigned locally to or moved locally from public markets, the carriers are required to load or unload from the chute pens.

MR. BOSWORTH: Now, just a minute. I want to object, Mr. Examiner. This raises largely a question of law. I believe the proper construction of the law is that the cost of unloading shipments coming locally, consigned locally, and that takes it apart from this transit situation which Mr. Pexton has previously testified to, is included in the rate charged by the carrier, but there is nothing in the Transportation Act or in any decision which requires the carrier to unload. It is simply a question of who pays the cost, and that is all there is. Now, I think that it is an improper type of question to ask a witness who is not a lawyer for his understanding of the law. It calls for a legal conclusion.

MR. COOPER: Well, this witness has at various times expressed legal conclusions, and in addition
1908 to that he has testified, as a part of his qualifications, that he was admitted to practice before the Interstate Commerce Commission.

MR. BOSWORTH: I had forgotten the last and in view of that fact I will withdraw the objection from the standpoint of the legal construction of it.

(Witness continuing). The carrier is required to absorb the expense incident to the loading or unloading on strictly local traffic; as I read it there is nothing in the law which compels the carrier itself to do that. Our strictly local traffic amounts to about 20 per cent of our total receipts, so that in our unloading and loading we are working for the carrier about 20 per cent of the time and for

Trans.

the producer in the handling of livestock in commerce about 80 per cent of the time. I would like to add here, the same law which covers this also carries the exception that loading and unloading charges need not be absorbed where transit is granted or where shipments are unloaded at the request of producers.

Loading and unloading charges not absorbed if transit granted.

1909 In handling livestock, which is a perishable commodity the carrier, having taken custody of the livestock, as a practical matter has to, in order to comply with the 28-36-hour law and also the Interstate Commerce Act, provide facilities for loading and unloading in some way either by furnishing them itself or by making arrangements with some other person, and where required to stand the cost, standing it in order that the livestock may be unloaded. However, if sales inspection, dipping, etc., takes place at the feeding point, the application may be changed even though the feeding point may be at a point where the 36-hour law has not taken effect.

1910 When I previously stated that the carriers paid taxes in the City and County of Denver on a basis of one-half of the value of the land, that was not on the theory that the land in Denver is assessed at one-half its actual value; it was simply an agreement arrived at at the time of the original lease.

Though the Blayney-Murphy plant is not as well located as the Armour and Swift plants for the reason that it is served by the C. B. & Q., it is true that the switching charge on shipments from the Blayney-Murphy plant is absorbed by the carriers if the shipments are moving to competitive points.

I made the following statement on direct examination: "Having railroad tracks with our own unloading chutes has enabled us to more rapidly 1027

Trans.

unload shipments of livestock coming into the market, thereby getting them on feed more promptly and the patrons receiving a heavier fill."

Loading and unloading facilities described.

1911 The Burlington dock contains 28 unloading chutes and serves that line; also business switched by that line for the D. & R. G. and C. R. I. & P.; the Union Pacific dock contains 24 unloading chutes and serves that line, the C. & S. and the Santa Fe. The so-called quarantine or C. & S. chutes belonging to the Stock Yard Company contains 13 chutes and serves all lines. The river dock contains 12 chutes and serves all lines. The reason for the statement I made on direct is that we will frequently have shipments in off the Burlington or D. & R. G. which if all handled on the Burlington dock would congest that dock and result in slow unloading. Because of the two stockyards docks served by stockyards tracks being available, we could and often do unload train loads of livestock coming in on the D. & R. G., switched by the C. B. & Q. on their own dock and our two docks at the same time. Now, if the quarantine and river docks are only limited to one line, it would mean that these trains could not be split up but would have to await their turn on the Burlington dock.

I have made no computations with respect to the percentage of our shipments which are unloaded at docks contiguous to the tracks owned by the carriers and it would be impossible to estimate that
1912 without checking a year's business. We have checked the efficiency of each dock and found that per chute the quarantine chute handles more cars than any other dock. Next ranks the U. P. dock, next the river dock and next the Burlington unloading dock. All lines, of course, use the quarantine dock, including the Burlington for D. & R. G. business, Union Pacific and C. & S. and D. & S. L. We cannot take the yearbook and, because

Trans.

the Union Pacific brought in 10,000 cars, for example, or loaded out 14,000, estimate that they were all handled on the U. P. dock because they are not. When the U. P. is loading out for their hot shot, for example, they will use their own dock, the quarantine dock, and the river dock all at the same time and without an actual check. As a rough estimate and more or less of a guess, I would say that approximately 40% of our traffic is handled on the two stockyards docks and the other 60% on the U. P. and Burlington docks.

If we did not have our docks and had, for example, a train of from 70 to 80 cars off of the D. & R. G. switched by the Burlington in the fall, as we often do, and found it necessary to unload all on the Burlington dock, the unloading would not be near as rapid. Because of the arrangement we have, practically all of the unloading is quite rapid.

Can't control switching at R. R. Co. docks.

Our company does not control the switching of cars into the docks irrespective of what road they happen to come in on. We could not order Burlington livestock unloaded on the U. P. dock or U. P. livestock unloaded on the Burlington dock. We do, in a measure, direct which dock shall be used if it is possible to use other docks and specify where certain species of livestock will be handled. For example, we instruct railroads that we will only handle hogs on our own docks to avoid driving these hogs either through subways or over viaducts. If a train carries a majority of sheep we will instruct that they be unloaded near the sheep barn rather than, for example, on the Burlington dock, which would cause a rather long drive.

1914 I stated in my direct in connection with the railroad lease that the fill had been allowed for 30,000 cubic yards at the rate of $1.00 per cubic yard. It

Trans.

was estimated by the engineers that it would cost that amount to obtain the fill at some distance from the property and to haul it to the desired location, there being no filling material immediately available.

I do not know how the cost of grading was set up in our investment account. I couldn't say whether our accounts are so kept that it could be determined.

Club Building.

Referring to Zone 9 and the Club building located thereon. The lower floor of the Club building is leased at this time to anyone we may find in the market for space in that territory, such as restaur-
1917 ants, stores and so forth. The second floor is used by the manager of the stock show before, during and after the stock show for a period of about six weeks, it being necessary to have an office for the manager and his clerical staff in that locality.

Zone 10 Necessary.

Referring to Zone 10. We having had no need for gravel for the past two or three months to amount to anything, I do not believe any is being removed right at this time. It is our expectation that we will take gravel from that area this fall during icy weather when it is needed and no longer remove gravel from Zone 3, as recent levels on Zone 3 indicate we will need all of the present gravel or dirt in that zone for filling of the zone when it is needed for stockyard purposes. The management has instructed our superintendent to discontinue taking gravel from Zone 3 and I understand he is no longer taking gravel from that source. Those instructions were given about ten days or two weeks ago. I understand that our force made an error and did take some from there possibly two or three weeks ago but I do not think it will occur again in the future.

Gravel for Zone 3 discontinued.

Trans.

Correcting page 1,681 of the record, the cattle and calves purchased at Denver during 1934 is 205,962 of which 17,107 head, or 8.3 per cent were sold to other dealers. There were 43,474, or 21.1 per cent of cattle and calves resold on the market. I stated 58,296 head, or 28½ per cent, were shipped to other markets for sale. This should read 58,445 head, or 28½ per cent. The figure 68,710 head, or 33½ per cent, purchased on orders is the same. Also the number shipped unsold from Denver of 5,525 head to feed lots, and the number purchased for slaughter at Denver, or 12,492 head.

Trader Sales Analyzed.

1919 The reason for these corrections is due to the agreement reached with the Government on the amount of livestock purchased and resold by traders.

Referring to Government Exhibit 43 and the side heading entitled "Bought on order," when I use that term I am referring both to the case where cattle to which traders take title and resell which they ship out of the market because they have a client with whom they get in touch and to the case which, under the Packers and Stockyards Act is technically referred to as "Purchases on order," that is, where the cattle are purchased and the producer pays a commission and receives the original package direct. There would be included in these figures cattle such as were referred to by Mr. Wolf this morning when he spoke of sending out cattle on orders but which he himself had actually purchased and on which he had attempted to obtain

1920 a 10 cents per hundred profit, but it would not include any cattle which were re-weighed at the market. The only cattle re-weighed were those shown under heading II, this being the amount resold to dealers, 16,526 cattle and 581 calves, and those resold to others 40,591 cattle and 2,883 calves.

Referring to the case where the dealer goes out into the country and fills orders and gets an ad-

Trans.

vantage thereby by reason of the 85% transit rate: where dealers make purchases of that kind it may be that the purchaser in the east who buys the feeders gets the advantage of it or it may be that the dealer himself is enabled to take the advantage and thereby increase his profits. It would depend on whether the dealer was purchasing on straight speculation or on an order. If he was purchasing on speculation, he would endeavor to sell the cattle as high as possible. If he was purchasing on order, he would probably charge the customer 50 cents or a dollar a head for making the purchase, this being the going commission rate for country deals in our territory.

Dealers Strike in 1930.

1921 Q. Now, you referred to this so-called dealers' strike after the date, effective date of the Secretary's order. Do you know whether the traders knew that the Stock Yard Company was averse to the imposition of a trader charge?

A. Well, they may have known our attitude at the original hearing. However, after the order came out, we had some conferences with them, told them that the matter had been taken to the court, that we would endeavor if possible to avoid the collection of the charge, but that while the matter was in court it would be necessary for us to make the collection, and we hoped that they would accept it in an orderly way and depend upon the decision of the court to be fair to them. We promised them that as we were impounding the revenue above the Secretary's rates from the original shipper, we would also impound the revenue that we would collect from them and refund to them promptly in the event we were successful. We also stated to them that

 we felt their interest lay in the development

Trans.

of the Denver market, that they would make a mistake by doing anything to oppose this charge, that any adverse action on their part would militate against the market, would probably react against receipts *coming to Denver* and would cause damage to them as well as the Stock Yard Company, and in other ways endeavored to prevail upon them to accept the charge in an orderly way and comply with the rules of the Secretary in the same way that we were. And it is our understanding from these conferences that they would do that.

Mr. Shoemaker, the president and general man-
1922 ager of the company, happened to be called East the weekend before the new rules were effective. Sometime over the week they apparently decided, and as far as I could find out, they had no meetings or collusions, and I don't know just how this came about, but anyway, at any rate on Monday they did not appear on the market to buy. I talked to various traders, telling them I thought they were making a serious error, that while there apparently was no collusion on their part, yet anyone investigating the matter would be bound to feel there had been collusion, that the condition of the market was bound to affect our receipts the entire fall, and endeavored to persuade and prevail upon them to go ahead on the market and operate. Securing no results, I called Mr. Shoemaker at Chicago on the telephone, advising him of the condition. He replied that he thought if I would take the matter up with them properly, expressing the viewpoint of the company, calling attention to the damage to the market and the damage to producers their action was causing, that I could prevail upon them to go ahead and accept the charge, paying the re-weigh. or half yardage charge and letting it be impounded. 1033
I went back and talked to various traders and oth-

Trans.

ers on the market that day, pleading with them that they take action on the market. Their usual reply was that they were in no sense boycotting the market, that they simply felt the addition of this charge would put them out of business and that if it was necessary for them to go out of business, they had better find it out immediately and either get into other business or handle their dealings
1923 elsewhere. The matter ran along this way with practically no action on the market until the next day when I called Mr. Shoemaker, and it is my recollection that he stated to hold the matter in abeyance until he returned home. He returned as promptly as possible, and after giving due consideration to all of the factors, decided that it would be in the producers' interest to waive the charge until we knew definitely from the court whether it should be collected, and this was done entirely in the interest of the patron of the market. We felt the effects of this action the entire fall; that is, our competitors would sympathetically talk to producers, stating that it was too bad about the situation in Denver, and so forth, and in a way leave the impression that our operations and outlet on the market were still curtailed.

That tells substantially all of what was done by the Yard Company in its effort to break up the strike. I know that we were most emphatically opposed to any such action as this and did everything we could in our power to prevent the action in the first place and to break it up after it started, knowing that results would be more or less what they were, that is, that our receipts would be affected the entire fall.

Referring now to the NRA and the number of men which were added to our payroll as a result of
1034 the NRA wage schedules: I can check that up for

Trans.
1924 any given date before and after the NRA. It is my recollection that right at this time we have about 35 more men than we had for a like amount of business prior to the NRA.

1926 Referring now to Respondent's Exhibits 15 and 35: I do not feel that the expenditures for roads set out in Exhibit 35 are of the same general character as the expenditures set out in Exhibit 15. The expenditures on account of roads set out in Exhibit 35 are to create better accessibility, to better serve our property, while the expenditures on Exhibit 15 are for the betterment of and to create buying demand on the property. The opening of a road into the property would not necessarily create additional buying demand on the market, at least not back from 1886 to 1915.

In my opinion the expenditures for roads indicated on Respondent's Exhibit 35 should be taken into consideration in value of the land.

Referring now to Respondent's Exhibit 15, the first item, or the first two items, I stated that a Mr. Gebhard was president and manager of the Colorado Packing Co. To my knowledge I don't think he was ever connected with the Stock Yard Company.

Q. An audit made by our Department shows that at the time The Denver Union Stock Yard Company was organized in 1886 one of its directors was a Henry Gebhard. Would you be in a position to state whether they were one and the same person?

A. Well, I had no knowledge that Henry Gebhard was ever connected with The Denver Stock Yard Company. I knew that he was not during the period after I came to Denver, which was after 1915, and I have never heard or 1035

Trans.

understood that he had been connected with the Company. However, I would not feel that if he did have that would have any particular bearing on this because the grant to Mr. Gebhard in the establishment of the Colorado Packing Company was not nearly as large as a later grant made to the Western Packing Company. It is my understanding that Swift & Company was not interested in the Western Packing Company as early as 1902, that after the National Packing Company was organized the old Western plant and the Colorado plant were purchased by the National Packing Company about 1906 retaining ownership until the
1928 National Packing Company was dissolved about 1912 and that in the split-up of the assets of that company, Swift & Company took their present Denver plant and Armour & Company the plant of the Colorado, or their present Denver plant.

(Witness continuing). It is my understanding that the National Packing Company was owned by the Swift, Armour, Sulzburger, Morrises and so forth. However, the organization of that company was sometime after the grant to the Western Packing Company and the building of the Western Packing Company's plant at Denver. My information is that the National Packing Company first acquired an interest in the Colorado Packing plant about 1906 and Armour & Company about 1912 or 1913. As I understand it the National Packing Company acquired their interest in The Denver Union Stock Yard along in 1906 and in the dissolution of that Company Armour and Swift divided The Denver Union Stock Yard in 1912 or 1913.

Q. Do you know whether either Armour or
1036 Swift had any indirect interest in The Denver Union Stock Yards prior to 1906?

Trans.

MR. BOSWORTH: Now, Mr. Examiner, I would like to ask the purpose of those questions because on the face of them they seem to me to be entirely immaterial and irrelevant.

MR. COOPER: I think the purpose of them is
1928- perfectly clear. There was a period clearly from
A 1906 on when the Armour and Swift interests controlled both the Stockyards Company and the packing plants, a part of which plants secured property on these grants that are indicated in Respondent's Exhibit 15 and, of course, when the same parties own two pieces of property it is very easy to transfer one to the other without having any actual consideration involved.

THE EXAMINER: The witness may answer.

A. It is my understanding after all the checking that I have been able to do that they did not, that is, Armour and Swift had no interest in the Denver market in any way until that property was purchased by the National Packing Company. I would call attention to the fact that our grants since 1906 or since the entry of the National Packing Company into
1929 the Denver market had been very much less than they were prior to that time and that it is apparent the grants made by the company prior to 1906 did result in the building of a good sized packing industry in Denver which attracted these people.

1930 In estimating the value of the land in these grants indicated in Respondent's Exhibit 15, we used as a basis the value obtained by analysis of the so-called Pitkin sale.

I was not acquainted with Robert Knox Pitkin, although I understood that he was a resident of Denver owning that property. I do not 1037

Trans.

know when he acquired it nor how long he had it, nor do I know what was located on the property when he acquired it. From the information I have been able to obtain at the time he sold the property there was located thereon substantially the same property as was on it at the time I came to Denver in 1915, that is, some sheds, pens, etc.

I do not know that there was any other consideration for that sale in addition to the actual physical property.

1931 Q. Did you make any analysis, Mr. Pexton, of the cost of land in the stockyards area which was acquired at various times by The Denver Union Stock Yard Company?

MR. BOSWORTH: Objected to as incompetent, irrelevant and immaterial.

MR. COOPER: Mr. Examiner, I think counsel for the respondent has mistaken the purpose of this question. In the preparation of Respondent's Exhibit 15, the witness has used as a basis for his comparison the value of the land in the Pitkin sale in 1888 as representative of the value of the land which was transferred by these grants; at the same time the respondent company had made other purchases, and in attempting to determine what was a reasonable value as of the date of those grants, I am simply asking whether the witness gave consideration to the prices actually paid by the respondent company for certain lands, part of which I think were included in these grants.

THE EXAMINER: Objection overruled.

THE WITNESS: I endeavored to do so, yes, sir.

1932 (Witness continuing). The unit value per acre of the land in the Pitkin sale used in Respondent's

Trans.

Exhibit 15 I felt to be $4,375.00 per acre, that is $2,500.00 for the improvements and $50,000.00 for the land.

I did not give any consideration to the purchase made in 1886 of the Clough Stockyards Company, which included 53 acres of land with certain buildings for a total purchase price of $50,000.00, for the reason that that purchase represented a transfer from an individual to a corporation of which that individual was an officer and I felt for that reason it was not truly representative. I did not give any consideration to the purchase of 11.45 acres from James F. Wolf in 1888 at an average price of $1,441.00 per acre, because the majority of that was low-lying land along the river, not filled, and I did not feel it was comparable to the stockyard
1933 area or the land that was given to the Western Packing Company or even to Henry Gebhard. Even if it developed that a part of this Wolf land is included in the Gebhard land I would not change my answer because if that were true that part would be the higher ground of the Wolf purchase.

I did not give any consideration to the purchase made from Frederick A. Keener of 14.34 acres at the rate of approximately $1,500.00 per acre, which is now a part of Zone 2, because I did not feel that it was comparable to the Pitkin tract for the reason that it was across Franklin Street and at a considerable distance from the stockyards proper and the center of industry at that time.

I did not give any consideration to the purchase made from St. Vincents Land Company in 1900 of 5 acres lying just south of the Pitkin tract and bordering it, because that land is now in the heart of the river bed and at the time of purchase was low-lying land adjoining the river, and I did not 1039

Trans.

feel that it was at all comparable to the stockyard area or the land given to the Western Packing Company or the Colorado Packing Company.

I did not give any consideration to the purchase made from Sheedy and Berger of 20 acres at the rate of $1,000.00 per acre, which land is now part of Zone 1 and part of Zone 5 and a portion of it lies in the river, for the reason that I did not feel it was in any way comparable to the stockyard proper or to the land given to Swift & Company because the part of that tract now on this side of the river was at that time in the river bed and was very low-lying land, and the part across the river was separated from the stockyard proper and carried a lower value for the same reason that it does at this time.

1934 I did not give any consideration to a tract of land purchased from Charles F. Morse in 1888 known as the Jennie Rubble tract of 10 acres at the rate of $1,700.00 per acre, which land is now mostly owned by Armour & Company. That particular tract of land was almost entirely in the tract of land donated to the Colorado Packing Company and now a part of the Armour tract. Mr. Morse was an officer of the company and I did not feel that that particular sale should be used.

I did take into consideration the purchase made by the Riverside Cemetery Association of 29.92 acres at the rate of $3,000 per acre, which land was purchased in 1916 and is located in Zones 2 and 3. If you will note item 14 on Exhibit 15 I used the value of $3,000.00 per acre for the land granted to the C. B. & Q. of 2.5 acres, this being the price the land cost us. That grant was made in 1917. I note that this exhibit shows that the grant was made

1040 in 1919. That is the date that the deed was re-

Trans.

corded. The actual land was given to the Burlington in 1917 and they extended their tracks thereon in that year.

Referring back a moment to the 10 acre tract that was purchased from Charles F. Morse. Mr. Morse deeded the property, as I recall, to the Stock Yard Company in 1898. I do not know what he paid for it and whether, because of being an officer in the company, he made any profit thereby. As a result
1936 of these various grants and the situation as it developed, at the present date there are now located at Denver three of the so-called big packers. We feel that their presence is of great value to the Stock Yard Company and to the market as a whole and to our parton, the producer, because of the outlet they create at Denver, not only for local slaughter but for shipment to other points for slaughter.

It is substantially true that it has been the universal history of the stockyards business that no large terminal market has been developed without the presence of one or more of these large packers. Their presence, because of the volume of business they handle, is necessary for a market to be successful in a large way. Any expenditures made to reach that result is to the benefit of the producer.

Q. Now, if you can imagine such a thing, Mr. Pexton, what would be the effect on your market if over night the presence of these three packers could be wiped off and tomorrow morning you would go out there without any big packers?

1937 Whereupon counsel for respondent objected that the question was incompetent, irrelevant and immaterial. Objection was overruled.

(Witness continuing). It would be extremely difficult for me to imagine such a thing. If such

Trans.

an occurrence did happen without a question of doubt it would affect our outlet very materially. We would then, of course, be compelled to get together and decide what could be done, and it would be a case, possibly, of building the market over again at this or some other point.

MR. COOPER: (Continuing). If such a thing were to happen, Mr. Pexton, do you feel that your stockyard property as it now is would be worth its cost of reproduction new less depreciation plus the appraised value of the land?

Counsel for respondent thereupon objected on the grounds that the question was improper. The objection was sustained.

1941 A. Obviously if we did not have the outlet that now exists the Stock Yard Company would not own facilities that it now owns. There-
1942 fore, such a property as this would not be available for purchase. I recently looked over various sites for a stockyards in a Western city, with a view of building a stockyard at that point. That particular place now has a livestock market which is not properly located either for outlet, switching facilities, prompt handling, nearness to the city, and so forth. When one goes to look for a stockyards location, all of these things must be taken into consideration as well as damage suits that might result from the so-called nuisance that a stockyards is supposed to have.

It is a good deal like the value which Mr. Zelinski placed on a right-of-way of the Pere Marquette in Bay City, Michigan, of $112,000 on land on which Pere Marquette had an easement granted by the City, but which they did not own. Mr. Zelinski assumed that because of this easement the Pere

 Marquette had prescriptive easement against the

Trans.

abutting property owners, and the right to damage by smoke, noise and vibration without being responsible, and that if they had not had those rights, it would have cost $112,000 to acquire them. This land of The Denver Union Stock Yard Company does have this right, is particularly well located both from a railroad and highway transportation standpoint, from having railroads out of Denver, from having prospective stockyards sites and having a large amount of livestock available.

If I was in the market for a stockyards and there existed no packers at Denver, but this site of land
1943 with all of the other outlets, facilities and supplies that I have enumerated, such as a year around supply of lambs, a good supply of hogs for local requirements, a location at the eastern edge of the producing area, and the western edge of the fattening area, a location closely adjacent to the feed lots of northern Colorado, I am inclined to believe I would be willing, if I had the money, to pay a very substantial price for this land with a view of erecting the necessary stockyards facilities upon it, and with the expectation that I would be required to expend considerable money in developing an outlet, and possibly attracting the larger packers to the Denver market.

1944 Referring to the so-called schedule of throwouts and specifically to the item of $832.56 which was contributed to the American Stock Yard Association. I would not say that that association is continuing to function 100% in the way it was functioning at the time it was organized and the time thereafter when the Code was under consideration. The Association has closed its Washington office. It is, however, still in existence and will undoubtedly continue to function in some manner as long as is necessary.

Trans.

I believe it is true that the maintenance of the Washington office constituted a larger part of the expense of that association.

I believe there is some difference of opinion among the officers of the association as to whether they will continue to function. However, I know it is the feeling of our company that an association of stockyards for the mutual good of both stockyards and producers is something desirable and that it should be continued. Naturally if the Wash-
1945 ington office with a paid secretary there is discontinued, the after expenses will be less than they have been in the past.

Now with respect to the Veteran Volunteer Firemen. It is an organization of men who were volunteer firemen in the early days, the organization being continued. They have an annual dinner for which the charge is $5.00, that being the amount of our donation.

The Gentlemen's Riding and Driving Club is an old organization, one of those that sponsored the horse show division of the stock show and the breeding of horses in the early days. They were of material assistance during the early part of the show in that portion of the show which provided the revenue. The organization still continues and supports the show.

When I stated that the International Veterinarians Congress was supported by the Bureau of Animal Industry I meant that it has the sanction of that Bureau and as I understand it, the endorsement of Dr. Mohler. Their annual meeting is a conference of veterinarians all over the country to decide what is the best for the livestock industry.

The Holy Name Basket Ball League is a league
1946 of various Catholic Churches in Denver, the members of which have an annual basket ball contest

Trans.

and tournament. Part of our employees and part of our patrons belong to these churches and we felt that this contribution or ad in their program was justified.

Business Hazards.

In discussing the hazards with which the stockyards business is faced, I mentioned the possibility of the importation of meat from the Argentine. It is my understanding that at the present time, due to an embargo on meat on account of the hoof and mouth disease, no meat can be imported from the Argentine unless it is canned. I am aware that at the present time, and for many years past, the hoof and mouth disease has been prevalent in the Argentine. It is my feeling that there is very little possibility that this disease will ever be eradicated in that country, but there seems to be some pressure brought on the President or others to take down the bars in this respect. We know Dr. Moh-
1947 ler's attitude about it and that if his opinion prevails, this embargo will not be lifted but we are fearful, however, along with many producers of the West that there is some possibility along that line. We know that from time to time pressure has been brought upon the Department to have this embargo lifted. The past two or three years under the New Deal numerous changes have been made, for example, the tariff has been reduced on sugar which we believe is to the detriment of the beet sugar producers of the West. We are fearful that the same attitude might exist with regard to meat.

Thereupon a number of issues of the Record Stockman beginning January 2, 1935, and concluding January 26, 1935, were offered and received
1948 in evidence and designated as follows:

Government Exhibits 56 to 56q admitted.

Issue	January 2, 1935	Government Exhibit	56
"	January 5, 1935	" "	56a
"	January 7, 1935	" "	56b

Trans.

"	January 8, 1935 -	"	"	56c
"	January 10, 1935 -	"	"	56d
"	January 11, 1935 -	"	"	56e
"	January 12, 1935 -	"	"	56f
"	January 14, 1935 -	"	"	56g
"	January 15, 1935 -	"	"	56h
"	January 17, 1935 -	"	"	56i
"	January 18, 1935 -	"	"	56j
"	January 19, 1935 -	"	"	56k
"	January 21, 1935 -	"	"	56l
"	January 22, 1935 -	"	"	56m
"	January 23, 1935 -	"	"	56n
"	January 24, 1935 -	"	"	56o
"	January 25, 1935 -	"	"	56p
"	January 26, 1935 -	"	"	56q

Respondent's Exhibits 5 to 36 admitted, objections being interposed and overruled *in several* cases.

1949 MR. BOSWORTH: Well, now, Mr. Examiner, we would like to have your ruling upon the exhibits which we have offered, which ruling was deferred until after cross-examination. That applies to Respondent's Exhibits 5 to 36, I believe.

Counsel for the Government thereupon consented to receiving into evidence Exhibits 5 to 10, inclusive, which were thereupon received.

Exhibit 11 was objected to on the grounds that it was incompetent and speculative. The objection was overruled and Respondent's Exhibit 11 was thereupon received in evidence.

1950 Respondent's Exhibits 12, 13 and 14 were received in evidence without objection.

Respondent's Exhibit 15 objected to on the ground that it is a use of a method entirely unknown to the law and absolutely immaterial. The objection was overruled and the exhibit was received in evidence.

Trans.

Respondent's Exhibits 17 and 18 were received in evidence without objection. (Respondent's Exhibit 16 had already been received in evidence.)

Respondent's Exhibit 19 was objected to as being speculative and immaterial. Objection was overruled and the exhibit was received in evidence.

Respondent's Exhibits 20, 21, 22 and 23 received in evidence without objection.

1951 Respondent's Exhibits 24, 25, 26, 27 and 28 objected to as irrelevant; objection overruled and the exhibits received in evidence.

Respondent's Exhibits 29, 30, 31 and 32 objected to as speculative, incompetent and immaterial. The objection was overruled and the exhibits were received in evidence.

Respondent's Exhibits 33 and 34 were admitted in evidence without objection.

1952 Respondent's Exhibit 35 was objected to as immaterial and speculative. Objection overruled and the exhibit was received in evidence.

Respondent's Exhibit 36 was received in evidence without objection.

Re-direct Examination

The Denver Union Stock Yards do not operate in any manner under a franchise from anyone whatsoever. We have never been advised by anyone, including the Department of Agriculture, that anything in the nature of a certificate of convenience and necessity is necessary in the establishment of a new stockyards, and in fact such a certificate is not necessary. Anyone can build a stockyards at any point they see fit without permission from any Government agency excepting possibly local authorities under a zoning ordinance or something of that nature.

No Monopoly.

Trans.

1953 As a matter of fact two auction sales have been commenced in Denver and it is my understanding that the zoning board, because these auction sales are not within the Class "B" Industrial District, has closed out one and is in the process of closing out the other.

The competition experienced by the Denver stockyards, because of other markets and direct buying, and with auction sales, is very real. We meet it every day and it seems to be growing. We find greater work, more advertising, more solicitation necessary at all times in order to maintain our position against these various forms of competition.

Denver Market competitive with others.

I recall the testimony of Dr. Dozier in the 1933 hearing that Denver, in his opinion, was the most competitive market, with the possible exception of St. Joe, due to St. Joe's location between Sioux City and Kansas City, and I believe he was right at that time and that the same conditions would obtain today as shown by his exhibit, showing the movement of livestock from our territory to the various markets.

1955 On page 1972 of the transcript the Government counsel and I were discussing the California movement in hogs. I there itemized the total revenue from loading and unloading, watering and spreading corn in the cars of $4.00 and stated that if the rates were properly related, a different situation would obtain. By that I meant the relationship between the rate on packing house products with the rate on livestock from our territory to the Pacific Coast. I meant by packing house products all the products of animals, both packing house products under the railroad definition and fresh meats. I meant that if the rates were properly related there would be an increased slaughter here in
1048 Denver. Double deck California type hogs will

Trans.

load about 140 to the car. Our yardage charge is
1956 12 cents per head on rail hogs. On a double deck car of hogs of this number selling at Denver our yardage charge would be $16.80, plus $1.00 unloading, plus the profit on the corn they might consume, or a gross revenue of probably $20.00 per car. Of course, we would require additional facilities over and above those that are necessary when the shipments simply water here in Denver, but counting the unloading and marketing charge and other revenue, the comparison is between $4.00 for hogs that simply water ~~here~~ in Denver and $20.00 if they were sold on this market.

Increased business due to Show.

In my opinion were it not for the Denver Stock Show the bulls sold at that Show and the fat cattle in carloads, and the feeder carloads sold during that Show, would not come to Denver. There would be nothing to attract them here. Unless there was a stock show to attract the buyers there would be no one to sell them to, and therefore no reason for the movement of this livestock to Denver.

Show attracts buyers.

With reference to why carload shipments either of bulls or fat cattle or feeders are not shown upon the hill property, Zone 9, the answer is that that area would not begin to handle the several hun-
1957 dred cars of livestock that are entered in the Show. For example, the approximate 100 to 125 cars of feeding cattle entered in the Show which pay an entry fee to the stock show, must be exhibited in the stockyard proper because there is no room in the horse and mule division for their exhibition. The same is true with regard to fat cattle, bulls, carload bulls and so forth.

Much of yard proper used for Show livestock.

In addition to the cattle that are actually entered in the Show, there also come to Denver during Stock Show week to take advantage of the prices

Increased business due to Show.

Trans.

during that period, several hundred cars that are not entered in the Show.

Show attracts buyers.

Lots of buyers come here who are interested in cattle that is not the proper show type. In fact, the larger volume of our sales is to people who are not interested in pure-bred livestock. This is particularly true of the feeder auction. We find no
1958 difficulty, however, in allocating the revenue from this livestock to the Show or on account of the Show. We know absolutely that the month of January would be our lowest month of the year and would have a substantial deficit were it not for the Stock Show. The Stock Show is held during January largely because it is a light month and we then have the facilities available to handle the increased business. There have been suggestions from time to time that it be held in October or November in a circuit with other shows. At that time of the year our facilities are crowded, and we would find it impossible to provide the proper facilities and equipment to handle the show. The show is particularly held during January in order to fill up what would otherwise be a light month and a deficit period. In our exhibits comparing December with February, we have not taken this into consideration but have only compared January actual earnings with December and February actual earnings, although it must be obvious to anyone familiar with livestock conditions in the West that January would not be as favorable a month as either December or February if it were not for the Show.

January earnings due to Show.

When I told Mr. Cooper that the pure-bred livestock shown at the Show were shown by professional showmen who traveled the rounds of the show, I meant, and I am sure that he meant, what is a common phrase in the trade, that is, men who are
1050 termed professional showmen who are simply breed-

Trans.

ers, whose major operation is the production of pure-bred livestock. They are not professional show-
1959 men in the sense that that term is used in most industries. There must be someone who produces good bulls in order for the ordinary run of producers to produce good cattle. They fill that need and then send their livestock to the point where the outlet exists. When I speak of a professional showman I didn't mean a man who has a trick horse or anything of that sort, and I am sure that the Government counsel did not mean that.

1960 The sales pavilion and the stadium are entirely different things. We have a so-called sales pavilion which contains seats and a small ring where prospective purchasers may observe and bid on the pure-bred livestock being offered. The stadium, or pavilion, as it was termed, is the place where the horse shows and rodeos are held in the evening and the pure-bred livestock, the 4-H Club livestock, single entries, and so forth, are judged during the daytime. The stadium is the common meeting place for the large number of producers who attend the show during the daytime. It is simply a combination building for these two purposes and is essential for both of the purposes.

Stadium and sales pavilion distinguished.

The stadium was built by the Stock Yard Company. The sales pavilion is an addition to brick barn No. 7 on the east side of Lafayette Street, that is, it adjoins that barn. It was originally built by the Stock Show Association. The Stock Show Association is a non-profit organization. The
1961 Stock Yard Company stands their deficits. It is generally understood by all concerned that the Stock Yard Company is back of the Show and will make good any of their bills. We have been called upon during periods of severely cold weather to make good deficits as high as $23,000 in one year.

Trans.

Any income or rental which is derived under the lease arrangement with the National Western Stock Show Association goes into the general fund of the company and to the extent of that addition to the general fund it assists in carrying this property. I would like to add that the Stock Show Association so-called, for example, last year, because there was such an association, was able to secure donations totaling $13,500. It is very doubtful if the Yard Company, in the absence of such an association, would have been able to secure any such donation, if any. We expect to receive on account of the 1935 Show a total of $7,000 rent which will go into our general revenues and assist in carrying the property devoted to Stock Show purposes. In our opinion, all of the revenue received during the month of January alone is a great deal more than the total carrying cost of this property.

If all revenue of Show included, property would carry itself.

1962 When the Stock Yard Company was operating the Stock Show on its own and attempted to secure these donations or any other support in a financial way for the Show even in the purchase of tickets, the person being solicited felt that here was a large and prosperous company well able to take care of their own affairs, soliciting a smaller individual for support and for that reason were not only reluctant in giving any kind of support but more or less ridiculed the idea of such a large institution to solicit donations or being so tight, as they expressed it, that they would not give away large blocks of tickets. Having an association corrects this condition and results in just the opposite condition. Members of the Board of Directors go to various individuals and institutions and make requests and their standing in the community places an entirely different aspect upon the solicitation and makes it more or less impossible for those solicited to fail to take their proper place to make

Trans.

the proper donation. So far as tickets are concerned, when the Stock Yard Company handled the Show, there was a continued stream of requests with an expectation on the part of those making the requests that the donations would be made. I know this is true because at that time I was on the other side of the fence, and made such requests upon the Yard Company and more or less expected that the tickets be given away. With a Show Association the conditions are entirely changed.

1963 These donations which we thus obtain in the support of the Show and the saving in the free ticket situation, most assuredly help the producer. It is, in effect, what makes the Show possible. Last year, that is for the 1935 Show, the revenue from general admission, seats and tickets totaled $37,491.13, advertising $1,640, and as I stated, donations $13,175. All of this money operated to pay the cost of the Show, to reduce the expense the Stock Yard Company would otherwise have had and all of that was expended for the good of the livestock producer. To have a separate show association makes the Show a great community interest, supported by all concerned, instead of a Show simply sponsored by one company. I do not question in my mind but that the interest in the Show and its beneficial results are materially increased because of having the Stock Show Association, and I think the management of the company was extremely wise in bringing about this condition. By so doing, they enlarged interest, secured greater results from the work and reduced expense to the Stock Yard Company very materially.

Income received lessens cost to producer.

Now with reference to the operation of Zone 2 north of Franklin Street and my testimony in connection with the closing of Franklin Street: the

Trans.

reason why subways could not have been put under Franklin Street, leaving the street open, is that it would have undoubtedly congested the situation. Subways would have resulted in more expensive
1964 operations and would have separated the yard so that it would not be as efficient from an operating standpoint or a sales standpoint. Also the water level in that locality is very near the surface.

At the northern end of Franklin Street, extending back a substantial part of the distance to the Burlington main line, it is only 2 to 4 feet to water and any work in that locality must be done by cribbing and with pumps to pump this water out if necessary. In our opinion, construction of subways in this particular area, based on experience, would be more expensive, much more so, than in a location where the same water conditions did not exist.

I believe that the water level in this area of the stockyards is much nearer the surface than the Country Club District, for instance, although I am not entirely familiar with the depth to water in the Country Club District.

1965 It is the water level that may be observed by looking at the excavating which has been done in the Grant Smelter tract purchased by the City and also in the famed Denargo tract where the water, after the ground had been excavated for gravel, stands about 3 feet under the level of the adjoining ground. All of this district is underlaid by water within a short distance of the surface. That is true, for example, even with the Exchange Building. When our Exchange Building was built the construction of the basement and placing the cement there and piers and so forth was very expensive.

Manure production.

In dry weather in the peak season the output of manure runs from 200 or 300 loads per day. By

Trans.

loads I mean our truck loads, which hold about three cubic yards in weight since we have found it necessary to employ as many as 10 to 15 outside trucks in addition to our own trucks and wagons, which number about 25, and during such periods those trucks will haul from 12 to 15 loads per day each, depending on the length of the haul.

1966 The difference between the dry and the wet weather in this situation is due to the absorption of moisture by the manure, and the bedding, and whatever it is in the pens that acts more or less as a sponge. As a result the wet weather cuts down the cubic content of the load because when the manure is extremely wet we cannot overload the truck or wagon. We have weighed such loads and find that during wet weather the load in one of our trucks or wagons would run up to 9,000 pounds to the load, which is an overload for either the truck or the wagon. In other words, there is always much more manure to haul off from the pens during wet weather than in dry weather, for the reason that we must haul out the snow, slop and one thing and another along with the manure. I most emphatically state that our present manure dock and manure area is not sufficient for our needs during the peak season of its production. During every year I watch this carefully, observing what is going on; I am down there myself almost daily, and I know the facilities and the land area Mr. Christensen recommended as sufficient would not be sufficient, and that if we did not handle it as we do, we could not make the manure sales that we do make.

Manure dock and dump insufficient.

As I stated in my direct, the customers we have for manure will not haul it during wet weather, neither will they haul it while it is in an extremely wet state. If you piled this into one large pile, it would take a long period for it to dry out. By

Trans.

handling as we do, that is, dumping more or less thinly over vacant land, and by "thinly" I mean two or three feet deep, it dries out rapidly and therefore is attractive to our potential purchasers. It is the experience of the Yard Company that this is more economical than any other method of handling manure. The way we handle, a truck with a load of manure goes on to the vacant area north of Race Court, finds a location not previously used, pulls the pin on the dump body and has emptied his load in 10 or 15 seconds. He can then immediately leave, returning to the stockyards for another load. By handling as we do, the efficiency of these trucks is very much more than as if we endeavored to pile in one location where it could be reached only by a clam shell. We tried that one year with the manure company who had contracted for ou output and found that our truck efficiency was greatly reduced because of the delay incident to backing the truck and getting it in position where the clam shell could handle it. Based on this experience, repeated tests and accurate figures showing the performance of trucks, and so forth, I am satisfied that the number of trucks we would require, as well as our manure disposal expense, would be very materially increased if we did not handle as we do now. I am convinced that this saving alone would carry the carrying costs of ten acres north of Race Court.

Referring to Government exhibit 55, which is the old blue-print of the proposed hog division west of the river on what is now Zone 5: that proposed improvement was not carried out for the same reason that the improvements north of Race Court were not carried out, as I explained on cross-examination, namely, economic conditions and a feeling on the part of the management and board of directors that we should wait until the depression

1056

Trans.

was over and conditions readjusted themselves rather than go ahead increasing our capital outlay and dissipating our operating profit.

1969 Both of these improvements have been the subject of discussion by the executives of the board of directors of The Denver Union Stock Yard Company and among the various foremen of the Company as well. There are some who feel that the work should be done immediately and there are other more conservative members who feel we should await a change in conditions both economic and weather before undertaking these developments. By "weather" I mean the drouth which then existed and also the corn hog program and the settlement of this West-bound meat case, etc. The controversy over this matter has been a very live discussion for the past three years.

1970 "Selling flat" on the market is a term used to cover livestock which is sold without benefit of freight or which the selling agency does not guarantee there is a freight benefit on. The average balance of the through rate on cattle and sheep from Denver to the Missouri River is 22 cents. This is the average from a large number of points of origin. The local rate on the same livestock from Denver to the Missouri River is 46 cents. The difference is 24 cents, this being the benefit, so-called. That is, when a man comes in and has his livestock sold with benefit of freight, he guarantees that it will not cost the buyer more than the balance of the through rate, which averages 22 cents for the movement from Denver to the Missouri River. The same conditions apply to Chicago, New York and other eastern destinations, the balance of the through rate being more than 22 cents, of course, in such cases. When livestock is sold in this way it is called "memo." By selling on "memo" is meant a sale on a memo basis. It is in effect a

Selling "flat" defined.

Sale on "Memo."

Trans.

guarantee by the selling agent that they have so handled the shipment that the buyer may use the inbound freight and secure the lower rate. If a sale is on memo and in some manner the freight benefit were killed, the selling agency would have to stand the cost. For example, as spoken of in Mr. Wolf's testimony, if the Denver Livestock had a car of cattle containing four odd head and they sold those out to some other buyer and then sold the remainder of the load to another buyer on memo or guaranteeing of freight and the buyer was not able to use the freight on account of the four head being sold out, the Denver Livestock Commission Company would be penalized the difference, or on the average of 24 cents per hundred.

Freight paid to River.

There are also other shipments which are sold freight paid to the Missouri River, these largely being lambs from northern Colorado feed lots which are freight paid to the Missouri River when moved into the fattening lot in order to secure the fat[illegible]ning in transit arrangement. The Interstate Commerce Act, as well as the decisions of the Inter-
1972 state Commerce Commission, provide that when shipments are consigned locally or slaughtered at a central market, the railroad company must absorb the unloading expense, but if they moved on, no such requirement is made. Because of this, at Denver when shipments are sold memo or freight paid, the unloading charge is added to the freight bill and collected from the producer and the reloading charge is added to the freight bill at the other end in the form of an advance only waybill issued by the railroad freight office at the stockyards and collected from the consignee. This, in effect, makes collection of both items from either the producer or consignee at destination. About 20 per cent of our rail traffic at Denver is slaughtered locally, the other 80 per cent moving on to other destina-

Loading and unloading charges not absorbed in transit cases.

Producer pays loading and unloading in 80% of cases.

Trans.

tions for either slaughter or further finishing, with the result that actually the carriers pay about 20 per cent of our loading and unloading charges and the producer or consignee the other 80 per cent.

On cross-examination I stated that as to shipments to competitive points the Blayney-Murphy, now the Cudahy, plant is able to have its switching charges on the Burlington absorbed, but that was not true as to shipments to non-competitive points. The majority of their shipments are to non-competitive points. For example, if they were shipping a car of meat to Rock Springs, Wyoming, a non-competitive point on the Union Pacific, they would be required to pay the C. B. & Q. switch themselves, whereas on a like shipment from the Swift
1973 plant switched by the stockyards tracks, there would be no such switching charge.

The same is true as to shipments from Blayney-Murphy, that is, Cudahy, to New Mexico and Arizona, where they have quite a business. To Albuquerque, where they run branch cars, there is a Burlington switch on Cudahy business, whereas on business from Swift & Company reached by the Santa Fe through their joint agreement with the C. & S. over stockyards rails, there is no such switch, and the same is true with regard to Armour & Co. shipments as compared to Cudahy shipments.

If the stockyard company didn't have its own tracks and a load of hogs came in on the Burlington, those hogs would have to be driven across the yards to the Burlington chutes or else a switching charge paid by the consignee.

Yard Company ownership of docks saves expense to producer.

If the Burlington only had their own dock, the stockyards company not having any docks, and we wanted the hogs unloaded, for example, on the U. P. dock, it would be necessary for the Burlington to turn that car over to the Union Pacific, who

Trans.

would charge a switch. In that event, I would assume the consignee would expect the stockyard company to pay the switch charge, at least I would if I was the consignee, inasmuch as the Burlington had unloading chutes of their own and the switching to the chute nearer the hog division was simply for the convenience of the stockyard company.

1974 In the practical operation of a stockyards it would not be practical to drive hogs across the yard from the Burlington docks to the hog division. I think it would be damaging to the hogs and create greater shrinkage, which would mean less return to the producer, and during hot weather would result in some death loss.

Mr. Charles F. Morse, who was mentioned on cross-examination, was the first president of the stock yard company here. He was a resident of Kansas City. At that period of this yard's existence, the Kansas City yard really owned or dominated this yard.

Attempts to acquire Union Pacific & Burlington docks have failed.

For a number of years the Stock Yard Company has discussed the possibility of purchasing both the U. P. right-of-way through the yards and the C. B. & Q. right-of-way through the yards with the executives of both lines. I know, for example, that Mr. Shoemaker, the president of the company, discussed it with an executive of the Union Pacific and Burlington as far back as 1918 because those executives discussed it with me at that time as to the feasibility of selling and what they would be giving up. Since that time I know that it has been mentioned and I personally have talked to, for ex-
1975 ample, General Manager Williams of the Union Pacific Railroad as to whether they would be willing to sell this land to the Stock Yard Company so that we could make all of our docks and tracks common and thereby avoid delays to the produc-

Trans.

er's livestock and secure greater efficiency from all of our unloading docks. So far we have had no success whatsoever. The Union Pacific, for example, feel that they have a right-of-way of their own into the largest industry in Denver, an unloading dock that they can use at any time they see fit without having it congested by other lines, that they can bring a setting of cars down there in the morning, leaving them setting on the loading dock and having them loaded as orders appear, which they do not feel would be possible if they did not own the docks themselves, we forbidding the railroads to let empty cars set on our unloading docks. They think that because of having this dock and track of their own, they can give better and more prompt service and thereby secure additional business, and for that reason will not consider making any sales to us, although we have intimated we will pay them a very attractive price for the land. Reference to NRA provisions in leases with Governmental agencies and Respondent's Exhibit 37 relating thereto are omitted.

1980 We do not have any trouble with the subway under the U. P. tracks being filled with water so that the packers cannot bring their livestock through it. However, there was water underneath the ground where the subway is located and while it was being built extensive cribbing was necessary. The walls and floor are all thick concrete and keep out the water, so as a practical matter, the subway is perfectly usable. When, in referring to the U. P. right-of-way and docks I stated "The U. P. has a dock of its own" I was referring to the docks which are actually owned by the Stock Yard Company but which are adjacent to the U. P. right-of-way. The U. P. owns up to the edge of the dock and therefore no other line except the C. & S. can use that dock. 1061

(Witness excused).

Trans.

1982 MR. K. LEE HYDER, a witness called by the Respondent, after being sworn, testified as follows:

Qualifications.

My name is Lee K. Hyder. I live in Milwaukee,
1983 Wisconsin. I am an appraiser, in which capacity I am associated with the American Appraisal Company, with headquarters in Milwaukee. I am also an engineer and architect. I had a three-year engineering course at Colorado College, one year of architectural engineering at the University of Pennsylvania, and three years of architectural design. I am vice-president of the American Appraisal Company with direct responsibility for the activities we include under the designation of the engineering division. This covers the investigation and valuation of public utility properties, lands and land development, economic surveys and reports, appraisals of special purpose properties and intangible assets, such as patents, trademarks, lease holds, mining properties and other natural resources, industrial plant surveys, condition and rehabilitation estimates, and so forth. I have held my present position about six years. I have spent approximately 16 years with the American Appraisal Company and for the past 11 years have been in charge of the execution and direction of various phases of our engineering work.

My experience covers about 23 years of general building construction and valuation work. From 1911 to 1913 I was a practicing architect in Cincinnati, Ohio; from 1913 to 1918, practicing architect in Detroit, Michigan; and from 1918 to the
1984 present time I have been with the American Appraisal Company. In these 16 years about 50 per cent of my time has been devoted to valuation work in the field. I have served as manager of our architectural department and later directed all of the valuation work, both architectural and mechanical. For the past 12 years the land valuation work and other special work has been under my super-

Trans.

vision. I am a registered architect in the State of Michigan, a registered civil engineer in the State of Wisconsin; I am past president of the Detroit Architectural Club, member of the Michigan Society of Architects, the Architectural Society of the University of Pennsylvania, the Society of Industrial Engineers, Milwaukee Real Estate Board, the Association of Appraisal Executives and a member of the American Institute of Real Estate Appraisers. I am, at the present time, chairman of the Education and Research Committee of the American Institute of Real Estate Appraisers and am also serving as editor-in-chief of the Journal, the regular publication of that organization. I am a member of the valuation committee of the American Society of Civil Engineers and am chairman of the National Committee on Terminology, now making a study of engineering and appraisal terminology, upon which committee are included representatives from various technical societies. I have written many articles which have been published in various general and technical magazines, and covered subjects relating directly or indirectly with valuation matters. These magazines include Public Utilities Fortnightly, the National Real Estate Journal, Engineering News, Wall Street Journal and many other banking, construction, accounting and other publications.

1985 My personal practice covered residential and commercial property, including the design and superintendence of construction of garages, apartment houses, store and loft buildings, and some factory construction. Incidental to my own practice, I have been connected with the following firms:

Willison and Fallis, architects, Denver, Colorado, during which time I was engaged in the design and superintendence of the Vail Hotel, Pueblo, Colorado; the West Court Hotel, Denver, Colorado, and the interior reconstruction and rearrangement of

Trans.

the Denver Auditorium, and Garber and Woodward, architects, Cincinnati, Ohio. I was a draftsman in the firm's office during a part of the period of construction of the Union Central Life Building of Cincinnati, and also engaged in various drafting and engineering practice with this firm, primarily on school house design and construction.

Elzner and Anderson, architects, Cincinnati, Ohio: I spent some months in the office of this firm in charge of the design and completing of plans and specifications for a large general unit of the Cincinnati Hospital.

The Allyn Company, architects and engineers: I was with this firm as a manager of the group of architects in the Hamilton County Court House competition. I was associated in the design of the Miami Hotel at Dayton, Ohio, and the Bucknell Hotel at Springfield, Ohio.

1986 The Ferro Concrete Construction Company, Cincinnati, Ohio: with this firm I spent some months in the engineering office, working upon and developing studies of reinforced concrete design. During the same period, I developed the plans and specifications for major additions to the Eastman Kodak plant in Rochester, N. Y.

1987 During my 17 years with the American Appraisal Company, I have personally established the valuation of a large number of nationally known concerns, among which included the Kelly-Springfield Tire Company of Cumberland, Maryland; the Trumble Steel Company at Warren, Ohio; the Schlitz Brewing Company at Milwaukee, Wisconsin; Warren Webster & Company, Camden, N. J., a large number of investment properties, including many hotels such as the Bowman group of hotels at New York City and many other locations; the Radio Keith Orpheum Corporation, whom I have repre-

sented for many years, first for the valuation of
the theaters forming the Orpheum Circuit, and later
carrying through to the B. F. Keith Circuit, and
later for intangible property, and having as a joint
1988 client the Attorney General of the United States;
the Mayo Brothers hospitals and hotels at Rochester, Minnesota; the American Rolling Mill Company at Middletown, Ohio, whom I have represented for a number of years; a number of the packing plants of Armour & Company and Swift & Company, which I have personally appraised or directed the appraisal, our company having made complete valuations of all the properties of these companies; the Northwestern Mutual Life Insurance Company, whom I have represented for the past two years in reporting upon a number of properties for which they hold major loans, one of which was located in Denver, Colorado, and known as the Cooper Building; the National Surety Company, for whom I appraised a number of properties in the past two years, one of which was a large land holding in the vicinity of Denver; the American Oak Leather Company of Cincinnati, Ohio, and many other industrial properties. I have just completed an appraisal of the Stevens Hotel at Chicago, Illinois, and have for a number of years represented the Eppley Hotels Company in the valuation of most of their hotel buildings. I have personally handled a considerable amount of condemnation work representing private interests in the cities of Cleveland, Chicago, St. Louis, Buffalo, Cincinnati, New York, Milwaukee, Camden, New Jersey, and Detroit, Michigan, these having to do with programs of street widening or the acquisition of lands necessary for civic centers or other municipal developments. I have also represented the United States War Department in preparing valuations and engineering
1989 studies in connection with a portion of the Missis-

Trans.

sippi Flood Control Project, having to do with the acquisition of lands for the location of the new levee.

1989 I have also represented the City of St. Louis in condemnation work.

The valuation of public utilities has been under my direction, insofar as it has been handled by our organization, for a number of years. I have personally engaged in or directed the valuation of a number of large public utilities, including the Niagara Falls Power Company at Niagara Falls, New York; the Pullman Company, Chicago, Illinois, which included the manufacturing properties and a complete study of going value for carrier operations, which was later presented before the Interstate Commerce Commission. I am now engaged and have been for some years in valuations for the Wisconsin Telephone Company and the Milwaukee Gas Light Company. I have made studies and appraisals for the Lone Star Gas Company, the Indiana Gas Company, the Florida Power & Light Company, and a number of toll bridges, including the St. Louis and St. Charles bridge, the Covington and Cincinnati bridge, the Wheeling bridge and the Harrisburgh bridge. I have served as a representative in arbitration and valuation matters for the Baltimore & Ohio Railroad Company, the Chicago, Milwaukee, St. Paul, and Pacific Railway, the Big Four Railway, the Chicago Junction Railway, the Peoria & Pekin Union Railway, the St. Paul Terminal Railroad, the Fort Worth Belt Line Railroad and the South Omaha Terminal Railway, and others.

1990 I have appeared as an expert witness before the Interstate Commerce Commission in various cases, also before the Secretary of Agriculture through the Packers and Stockyards Division in

Trans.

several hearings, and many times before State public service commissions, courts and other bodies in matters involving valuation.

Stockyard Experience.

During the past fifteen years I have prepared appraisals covering the stockyards properties at Chicago, Omaha, St. Paul, St. Joseph, Sioux City, Cincinnati, Indianapolis, Cleveland, Peoria, Fort Worth, Wichita, Ogden, Pittsburgh and several minor yards.

Also I have made several appraisals at different times for the Denver stockyard. In addition I have made an inspection and condensed valuation of the yards at Kansas City, St. Louis, Oklahoma City, New Orleans, Louisville and Jersey City.

The American Appraisal Company with whom, as I have stated, I have been connected for some seventeen years or more, and of which I am vice president, is a corporation incorporated under the
1991 laws of the State of Wisconsin in 1896. The company has been and is now engaged exclusively in valuation work covering properties of all types and characters and generally throughout the United States and many foreign countries.

The company functions as a group of specialists of an association under executive control for the use of whom the company maintains a large accumulation of valuation data and statistics. It maintains a price analysis department, devoting its entire time and personnel to the assembling, analyzing and recording of prices of material, labor and equipment, studies of plant construction, layouts, design and other matters relating thereto. The company maintains connections with organizations from which it receives quotations and discount sheets, through which we are constantly enabled to keep in touch with the price situation and the factors affecting the value of properties. 1067

We have about twenty-four district offices at the present time, which are largely sales offices, but which direct to some extent the activities of our representatives when engaged in the particular territory. During the period of its existence I would say that the company has made in excess of 50,000 appraisals.

Knowledge of Respondent's properties.

1992 I have been familiar with the stockyards property at Denver ever since I was a boy. Denver was my home and I can recall spending many days from time to time at almost every opportunity at the stockyards. Specifically I have, as far as my direct studies of the properties are concerned, I have been closely familiar through observation with the stockyards property since 1920, a period of about fifteen years.

In 1920 I came to Denver and made a general inspection and condensed valuation of the physical properties as a part of a general nation-wide survey carried forward during that year. About 1922 or 1923 I supervised a detailed appraisal of the properties. A year or two later in 1924 or 1925 I personally directed a detailed appraisal of the property. Later in about 1927 I met with the engineers of the Packers and Stockyards Administration, as it was at that time, and made a reconciliation of the property inventory as between the inventory which I had prepared and that which the engineers of the Government had prepared.
1993 In 1929 I personally directed a re-appraisal of the properties and subsequently appeared and testified at the hearing held before the Secretary of Agriculture in Denver about February, 1930. In 1934 I came to Denver about August and laid out and directed up until January, 1935, a re-appraisal of the property, during which month the field investigation was completed. During this entire period

Spent 5 months in present appraisal.

Trans.

I visited Denver a number of times and on every trip I have, for some purpose or another, looked at the property and made some tentative or general inspection.

1994 We started work on the present appraisal in August, 1934. At that appraisal in 1934 I had the benefit of my past knowledge and experience with regard to this property. I had completed studies prior to that and the records had been maintained. However, I did not rely entirely on my past studies. I made a complete re-inspection of the properties. In so far as possible I utilized, of course, the working papers and studies that had been made before, but these were all checked in every instance against the property as it then existed.

I have been in attendance practically throughout this entire hearing and have heard Mr. Zelinski's testimony covering the appraisal of the structural properties on behalf of the Government. I believe that Mr. Zelinski's inventory is substantially correct. I was present when counsel for the Respondent indicated of record that Respondent would accept the Government's figures for reproduction new of the structural properties. I believe the cost of reproduction new as of the date of this valuation as determined by Mr. Zelinski is substantially correct in detail. I have made no investigation of the land myself, that is, as to its value, but I have very carefully reviewed Mr. Zelinski's report.

In my opinion Mr. Zelinski has apparently confined his report and his testimony to the value of the physical properties only, that is, the land and
1995 the structural improvements and construction overheads. He has apparently neither inventoried nor valued any of the intangible property elements. Intangible property elements may be defined as those

Intangible property elements defined.

Trans.

elements of property that may be possessed by the Stock Yard Company as reflected in the established business organization and other factors over and above the actual investment elements represented in the physical properties themselves, that is the land and structural improvements thereon.

1996 Q. Well, now, just so we may be clear as to our terminology here, the term "intangible property values" as used by the engineers, is that something different or is it the same as, we will say, construction overheads such as engineering, superintendence, interest during construction and things of that sort?

"Construction Overheads" and "Intangible property values" distinquished.

A. It is distinctly different in the valuation of public utility properties, inasmuch as the construction overheads relate strictly to those costs that are normally incurred during the period of construction of the physical properties. In other words, the construction overheads are the incidental expenses that cannot be directly assigned to any item of physical property and therefore are usually independently inventoried and valued and added to the structural items. They are, however, subject to the same treatment and are physical property, or a part of physical property just the same as the materials and labor. Intangible property is distinctly different and relates to those elements having to do with the established business and organization and similar elements not forming any part of the physical property or reproduction new of the physical properties themselves.

(Witness continuing). In the view of the engineer the so-called construction overheads are
1997 really tangible additions to property value. However, they cannot be definitely assigned, or if they

Trans.

were to be assigned to the individual item it would have to be on the basis of some allocation.

I note in Mr. Zelinski's statement that, in his opinion, the construction period for the reconstruction of the properties of Respondent would be one year. In my opinion, a period of one year for the reconstruction of The Denver Union Stock Yard property would be entirely too low and impossible of accomplishment except at unit costs substantially above normal. However, in examining and reviewing his estimates of cost where the construction period would obviously be a factor in the determination, I believe these estimates to be adequate.

Mr. Zelinski takes 80.5 as a condition per cent on the structural depreciable property of the Respondent. It is my opinion that the condition per cent as established by Mr. Zelinski is entirely too low and does not properly reflect the condition of the property as it existed on December 31, 1934.

As I understand it, Mr. Zelinski's figure of 80.5 is a composite figure. He took the separate elements and reached a condition per cent figure as to the separate elements by weighting all of the elements on the basis of relative costs of reproduction new.

Q. Have you made a study of the condition and accrued depreciation of the physical property as of December 31, 1934?

1998 A. I have.

Q. Is such a study what is meant by the more general phrase of condition per cent?

A. That is used by many engineers and termed "condition per cent." In my own practice I normally take somewhat the opposite view and establish the accrued depreciation which deducted from the cost of reproduction 1071

new, results in a figure equivalent to the condition per cent at the time of inspection.

Q. Will you explain how you made your study or various studies you took and the results of your study?

Hyder's method of determining condition per cent.

A. As previously stated I have been personally familiar with the property for many years through repeated inspection. To explain my approach properly I shall have to discuss the principles involved to some extent in establishing an accrued depreciation. As a concept depreciation is loss in value from any cause. The causes of depreciation include structural depreciation, structural obsolescence and so-called economic obsolescence. This is as resulting from influences developing from factors not directly relating to or from the use of the property itself. Age is also a factor in depreciation, although it is usually and properly treated as an underlying reason why other basic factors occur. The purpose of an appraisal is, in my opinion, important, in considering the elements of accrued depreciation. For example, the age or, more properly, remaining expectancy of life of a property item as compared to a similar expectancy of a new item is a definite factor in establishing the value of the property for sale. It is not, however, of material weight in the valuation for rate making purposes. For such purposes the actual condition of the property is controlling.
1999 Observed depreciation is all that should be given consideration, which would include such obsolescence as is existing and deductions should be made accordingly. It is my personal conviction that the only elements of depreciation to be properly deducted in setting up value as a

Trans.

part of the rate base is that actual depreciation that affects the capability of the property to render service as compared with new. Strictly speaking, however, observed depreciation has been given a somewhat broader interpretation by some authorities whereby it has been claimed that not only the depreciation that could be observed should be recognized but also allowances made for depreciation in certain portions of the property which could not be actually seen or inspected. This condition is particularly true in a complex property such as the stockyards, especially underground sewer and water lines, structural parts of the building, and so forth. To some degree the condition of the concealed portions can be estimated by the appearance and condition of what can be seen, also by the knowledge gained by long experience by observing the particular property where major structural changes may have afforded such an opportunity. I have adopted in establishing the accrued depreciation for the property of The Denver Union Stock Yard the broad interpretation that observed depreciation must embrace reasonable allowance for unseen property. In this respect, however, I have been fortunate in having had opportunity to actually see a considerable amount of ordinarily concealed construction by being actually on the scene during the period of expansion and changes in the yards. Such as, for example, the construction of the 1923, 1925 and 1928 extensions of the cattle yards and the new sheep house unit in 1929.

Witness has actually seen concealed construction.

2001 Based upon my continued inspection of most of the large stockyards properties in the United States, I believe the Denver yards to be close to the best in the actual physical condition of the property.

Condition of Respondent's Yard close to best in U. S.

Trans.

The climate is a very large factor in this regard, inasmuch as the determination of above-ground construction does not proceed nearly as rapidly as it does in the properties constructed along the Missouri River and other Middle West and Eastern locations. I personally examined, in each of the years in which I have previously stated an inspection was made, the detailed items which comprised the property at that time. In the present instance, I personally examined every item and detail of construction that could be observed, such inspection being carried forward, starting with the month of August, 1934, and being finally completed and again checked during the month of January, 1935.

Detailed Inspection.

In the case of the cattle pens, for example, I inspected each block or group of pens, first the rails and then the gates and fence posts, mangers, water troughs, and minor construction, paving, and similar items. Each group was then depreciated in detail and thereafter weighted in accordance with the appraised investment. The resulting cost of reproduction new less depreciation expressed as a condition per cent does not reflect my personal opinion of the relative capability to render service as compared with the new. Excepting for a comparatively minor amount of work necessary to repair fence rails, gates, depressions in the pavement here and there, the cattle block construction as a whole is, I believe, equally as capable for rendering service as would be true of brand-new facilities. However, in arriving at the intrinsic value of the
2002 facilities, there is no doubt perhaps that posts here and there may be in some stage of decay below the surface. The pavement is, of course, deteriorating and must at some time be subject to more extensive repairs and replacement; therefore, regardless of my personal opinion of the method which should be used for rate making purposes, I have

Capability to render service disregarded.

Trans.

established the accrued depreciation and condition per cent by taking all of these factors into consideration. That is, I have arrived at the figure which we may term condition per cent by using the observed depreciation which in turn recognized a reasonable allowance for unseen construction. In other words, the term condition per cent does not reflect simply the capability of the structures of rendering service. It also takes into consideration depreciation both observed and calculated. The method which I have used is in theory similar to that pursued by the Government appraiser, Mr. Zelinski, if I understand his testimony correctly. I have considered the age of the property in the sense that I believe age may be an influence that is slowly lowering the condition of the property and in that sense and to that extent I did consider age. I believe Mr. Zelinski considered age
2003 in the same manner, that is, that age in itself was not a direct factor but the deterioration would unquestionably be going forward due to the age of the property and what proportion of that could not be restored through maintenance or otherwise would be causing some deterioration.

So with respect to the cattle pens. Most of the construction can be observed, that is, the upper portion of the posts and the surface of the pavement can be observed and from that a reasonable judg-
2004 ment can be formed as to that portion of the construction which is not observable, that is, the inside of the pavement and the part of the posts below the ground.

Has had opportunities to observe underground conditions.

I have seen a number of rehabilitation programs where the pavement was removed and fence posts were taken out which, of course, gave me some definite, specific idea as to the condition found at that time and which has been, of course, used in

Trans.,

forming my judgment to some extent of the probable condition of the portion that could not be seen at this time.

Now with regard to under-ground sewer and water systems:

Past observation of actual conditions relied on.

It was not possible, of course, actually to observe and inspect as of the date of appraisal a large portion of these systems. I did inspect the condition of the manholes and that portion of the sewer and water which was available in such manner. To a very large extent, however, I relied upon my previous observation of the condition of the underground lines here and there on occasions when they had been opened for connections or to tie in with construction extensions. I also took into account the character of the soil and the character of the materials comprising the sewer and water lines, and to some degree rested upon my experience in many other similar investigations. As a matter of fact, the larger portions of the systems involved consist primarily of cast iron and vitrified tile pipe. Numerous records maintained by public ultility corporations have shown practically a negligible *deterioration of either of* these materials in service, if properly laid on solid ground. The principal reason for failure and the resulting repairs that have to be made occurs through settlement, that is, the settlement of the soil which
2005 causes the joints and connections to break. Usually a brand-new sewer or water system will show greater deterioration as a whole following the first full year or period of operation than it shows after the beds have been properly settled and the preliminary repairs and adjustments completed. Thereafter, excepting by accident, given a reasonably proper soil, little deterioration is anticipated or found.

Trans.

I have prepared a statement setting forth the accrued depreciation as I have determined it for the property of The Denver Union Stock Yard Company, which is marked for identification as Respondent's Exhibit 38. It is entitled, "Development of Accrued Depreciation Rates as of December 31, 1934." It consists of a five-page statement, the first two pages of which consist of a summary by major property divisions and setting up three columns, the first being the cost of reproduction new as established from my appraisal of the property; the **Respondent's Exhibit 38 described.**

2006 second, the cost less depreciation from the appraisal, and the last being the weighted rate of accrued depreciation as determined. The last three pages comprise the further details, taking the major items under each classification and showing the method by which the total rate by classifications was determined. The last page sets forth the grand total cost of reproduction new of the physical properties, excluding indirect construction costs or general overheads and also exclusive of movable equipment, also the cost less depreciation for the same items, the weighted rate being shown as 10.7 per cent. In the summary forming the next two pages all items covered under actual structures have been forwarded from the detail sheets and to which have been added movable equipment items showing both the cost of reproduction new and the cost less depreciation and the per cent of accrued depreciation, the whole being finally assembled and weighted on page 2 under grand total at the bottom, showing a weighted accrued depreciation per cent of 11.1.

2007 The very first heading on page 1 of this Exhibit "Utility Building" should be "Utility Buildings."

The figures occurring in the first column of figures are my totals for the various classes of the reproduction new cost; they are not the Government figures.

In spite of the fact that Respondent has accepted the Government figures on reproduction new, I have inserted my own calculations of cost of reproduction new in this Exhibit because the difference up and down in the cost of reproduction new would have made a difference in my calculations as to accrued depreciation, and therefore a difference with respect to condition per cent, probably minor but nevertheless a difference, would have resulted.

2008 Having reached my percentage which is in the third column, and which I have called "weighted rate" I applied that weighted rate to the Government figures of cost of reproduction new. The result of this calculation is contained in an exhibit now marked for identification Respondent's Exhibit 39. This exhibit is entitled "Development of Cost of Reproduction New Less Depreciation as of December 31, 1934, and Computation of Annual Depreciation on 'Straight Line'" basis adopting cost of reproduction new by Mr. Zelinski and the condition per cent and straight line rates as I have determined. The exhibit consists of a tabulation setting up in first column the cost of reproduction new figures contained in Government Exhibit No. 28 in dollars. The second column represents the condition per cent which I personally established, and taken as far as possible from the accrued depreciation and resulting condition per cent as set forth in Respondent's Exhibit No. 38.

Respondent's Exhibit 39 described.

In some minor instances, through differences in summarization or method of inventory, it might not have been possible to exactly parallel the items with the equivalent or comparative rates. I think that these are very minor, however, and have no influence on the exhibit or results of the exhibit
1078 itself.

Trans.

The condition per cent figures, in other words, represent the deduction from one hundred of the accrued depreciation which I established through my inspection, and as assembled for each of the items as tabulated and taken from Government Exhibit No. 28. The application of the condition per cent in the second column to the cost of reproduction new in the first column results in the cost of reproduction less depreciation shown in dollars in the third column. This has been carried through in parallel with Government Exhibit No. 28 and results in a grand total shown at the bottom of the fourth and last page of the exhibit of $3,015,222, being the Government's cost of reproduction new of the structural property in total, and including general overheads, and $2,689,738 in total, being the computed cost of reproduction less depreciation which results in a weighted condition per cent of 89.2.

2010 The grand total of $3,015,222, of course, would be subject to any further adjustments in the total reproduction figures of the Government to coincide with the changes which Mr. Zelinski, I believe, has agreed to make. This, in turn, would change the figures in the third column to that extent. I would also like to call attention to the fact that the weighted condition per cent is shown to be 89.2, whereas in Respondent's Exhibit 38 the weighted condition per cent would be reflected as the difference between 100 and 11.1 or 88.9. This difference is the natural result of applying percentages to a variation in cost of reproduction new figures. Just where or to what extent change takes place in any item, I cannot say, but the difference is relatively slight, being approximately three-tenths of one per cent. The condition which I established in

Trans.

my own inspection and exhibit as applied to cost of reproduction new figures results in the lesser per cent by that amount.

As to the fourth and fifth columns, I would prefer to postpone a discussion of them until I have submitted another exhibit which I have prepared and will offer. At this time I should like to point out that in Exhibit 38, page 2 thereof, I gave a grand total of 11.1%, whereas on page 5 I have a grand total of 10.7%. This is explained as follows:

The last three pages of Exhibit 38 covered the details of the structural items only, exclusive of movable equipment, which has been included in the appraisal. Those details result in a weighted accrued depreciation of 10.7 per cent. However, when the movable equipment is added in the depreciation amount, a condition in which it was found to exist, the result is to increase the accrued depreciation as an entirety to 11.1%, which reflects a 88.9% condition.

Respondent's Exhibit 40 described.

I have prepared another exhibit in further explanation of Respondent's Exhibit 38. This exhibit is now marked for identification as Respon-
2012 dent's Exhibit 40. This exhibit is entitled "Cattle Division Accrued Depreciation Summary." The purpose of this exhibit is to give some further details in connection with the depreciation of the cattle division which is shown in one figure only at the top of the 4th page, that is the first item on the fourth page of Respondent's Exhibit 38, in amount cost of reproduction new of $489,000, approximately; or a weighted rate of 12.7 per cent. Inasmuch as this appeared to be a very substantial item and was assembled by taking all of the combined notes for a very large amount of property, I felt that it would be desirable to furnish some fur-

Trans.

ther details in connection with the condition per cent which I established for that portion of the property. Referring directly to Respondent's Exhibit 40, the first page sets forth the classifications structurally of the property included under the main heading of Cattle Division. In the first column it shows these classifications as fences and gates, hay platforms, mangers, paving, miscellaneous construction, electric lighting system, water troughs and signs. The first column the figures show the appraised cost of reproduction new for each of these classifications, which in turn reflect a total for all such sub-classifications equivalent to the figure for the whole cattle division shown at the first item on the top of page 4 of Respondent's Exhibit 38. The second column shows the accrued depreciation established for each of these structural classifications and the depreciation weighted for each of such structural classifications. The entire amount being weighted and resulting in 12.7% which is shown on Respondent's Exhibit 38. The second page of the exhibit has been designed and developed by
2013 taking the accrued depreciation and distributing such depreciation on the basis of the dates of original installation and location was determined by the detailed notes which had been made of all the blocks and property, and assembling this in accordance with dates of original installation. As a matter of fact The Denver Union Stock Yard's cattle division is laid out and numbered in a somewhat different form or method than is true in most of the stockyards property throughout the country. At the Denver yards the designations are carried forward by alleys or by locations of alleys, each alley being numbered consecutively. The dates of original installation and the area so covered have been taken from a map showing the historical development of the stockyards property as prepared

Trans.

by Mr. Reno, the stockyards' engineer and furnished to me. The map furnished to me by Mr. Reno is the same map that has been introduced into evidence as progress map Respondent's Exhibit 16.

2014 Referring to Respondent's Exhibit 16, the first item shows date of original installation 1917-1919, alleys 1 to 8. On Respondent's Exhibit 16, we find at immediately south of the Exchange Building areas colored in blue and pink, the blue or gray being labeled 1919 and the pink being labeled 1917, and also in the small figures being a part of the original blue print the designations, 1, 2, 3, 4, 5, 6, 7 and 8 which refer to the respective alleys involved in these sections. That is the area I have covered in item No. 1. As a basis for determining the weighted accrued depreciation in this area, I have developed on a unit basis the number of units in fences, the number of units in paving and the number of units in mangers, which in turn having a separate depreciation rate, has been weighted out by units to give 15.9%. The same method carried all the way through for each of the years in question shows a total weighted rate of 12.8%. However, troughs and some other minor items are considered independently, which means an adjustment in the figure in order to reach a check of 12.7 for the entire cattle division.

The note at the bottom of page 2 of this exhibit represents the approximate investment cost of reproduction new in what I have entitled as one fence unit and established for purposes of weighting. This fence unit is determined by taking an average block of 8 pens, measuring approximately 100 ft. by 64 ft., plus the proportionate part of the adjoining alley, and results in a total of 77.5 lineal
2015 feet of fence in what might be termed a standard pen. Now, the pens will vary in size, particularly

Trans.

where there have been catch pens involved and in other points where the fences have been removed or a change, as the case may be, the endeavor being to standardize on the approximate amount of material in a typical pen. Based upon the investment in the fences and the total number of units, the investment per unit is $114. In the same manner the paving has been developed, which shows 1,160 square feet of paving for one standard unit, or representing $228 of investment. In the same way one manger reflects $43.50 of investment. Now, while the mathematical computation would vary slightly, I have adopted for weighting a ratio cost of one for a manger, three for a fence unit and six for a paving unit. The result would not be exactly mathematically correct. In other words, this allocation would not check in even dollars the total depreciation excepting as to the entirety but it shows a relative condition of these different dates of original installation and was so offered or designed.

2016 The third page of the exhibit is a summary in which the dates of original installation and the property installed at that time have been brought together into one total for the year, following which the relative amount of facilities reflected as installed in total for each of these years.

The witness here requested that the column headed "Related Amount" on the third page of Exhibit 40 be changed so that the heading would read "Relative Amount."

(Witness continuing). For example, in the first item, the 1932 construction represents approximately 43 hundredths of one per cent of the facilities of the cattle pens. The second item, 1928 construction represents 17.28 per cent of the total. The third column showing the relative condition com- 1083

Trans.

parative, simply lists in the order of the condition the best, the poorest, and all in between in accordance with the regular 1, 2, 3, 4 system of designation. The last column shows the weighted depreciation per cent, which is simply a final summarization from page 2 of this exhibit. I might state that there are several different ways in which the condition and accrued depreciation could be assembled and weighted, in accordance with the years of original installation. It might be done by the number of square feet actually occupied on the ground area, or by the number of typical pens, or by the appraised investment. I have actually used the number of typical pens for this purpose. There would be slight variations, but not material ones, in accordance with whatever method was used. The particular point to which I would like to call attention in this exhibit is the fact that the date of
2017 installation does not necessarily have a controlling effect on the weighted depreciation or the condition per cent. On the other hand, there are some evident results based upon the age of original installations. For example, the 1924 construction which is shown as the fourth item is represented in an area directly north and slightly west of the Exchange Building, and which was very largely rehabilitated and reconstructed during the period of my inspection last fall, that is, in the fall of 1934. It shows therefore, in my opinion, the highest condition per cent and the lowest accrued depreciation of any other portion of the property, with the exception of the fence construction, being that portion of the yards located at the northerly end and constituting what is known as the loading out chutes, for which a weighted depreciation is given of five per cent. I think the percentage figures of column 3, Exhibit 40, indicate very strongly the up and down swing of the condition and con-

Trans.

sequently the effect or periodic maintenance and minor repairs and replacements that are continuously taking place in the yards. An outstanding example of that is in the item shown as the next to the last on the last page of Respondent's Exhibit 40, 1913, that is the installation which was made in the year 1913, and it shows a weighted depreciation of 23.9 per cent. This area is shown in red immediately north of the Exchange Building and just adjoining the Burlington chutes. In my opinion, it constitutes that portion of the yards that is perhaps at this time in the poorest condition of any part of the property, which is reflected in the highest weighted depreciation of 23.9. The reason for this is seen on the detail sheet, being
2018 page 2 of Respondent's Exhibit 40, for which item four shows the 1913 construction that was installed between alleys 9½ and 13½, the area to which I have just been referring. It shows a rate of 25 per cent for the fences and gates in that area, of 30 per cent on the paving, and 15 per cent on the mangers. It is apparent from a study of the paving particularly that the depreciation in pavement is the largest single item involved in this very substantial accrued depreciation.

The percentages shown in column 1 of Respondent's Exhibit 40 are simply the percentages of area based on the number of typical pens.

Annual depreciation reserve.

2019 Q. Mr. Hyder, in your experience in the appraisal of industrial and public utility properties have you had any occasion to investigate the method used in computing annual depreciation charges? If so, will you state your experience in regard to this item, adding anything you care to with regard to your qualifications.

1085

Trans.

A. My company maintains and has maintained for many years a department or division of activities, the time of which is devoted entirely to studies of questions of depreciation, to analyzing the repairs and the maintenance accounts, and rehabilitation expenditures of many of our clients, classifying these expenditures as between maintenance, depreciation and capital, and ultimately reporting to our clients the conditions found and our recommendations. As a part of this work, compilations and statistics are kept of the actual records found to exist in the use of property, or to have developed from the use of property under varying conditions and for various industries. In many investigations we were called upon to recommend rates of annual depreciation for our clients and studies are made of the property itself, to which, of course, we have the added benefit of the statistical records which we have maintained in the past. While not directly under my supervision, this department comes indirectly under a great deal of the work which I am called upon to perform. It is a
2020 portion of what we term our continuous service department which is engaged entirely in maintaining the appraisals and records for many industrial corporations.

2021 (Witness continuing). I am familiar with the points of difference and the methods of application of the so-called straight line method as compared with the sinking fund method of computing the annual depreciation charge or allowance. I have made a study and formed an opinion as to the proper annual amount of depreciation which The Denver Union Stock Yard Company should set up as of the date of this valuation, namely December 31,
1086 1934. I have prepared the results of that study

Trans.

in the form of two exhibits, one marked as Respondent's Exhibit 41 and entitled "Computation of Annual Depreciation Rates and Charges, Straight Line Method;" the other marked Respondent's Exhibit 42 and entitled "Determination of Fair and Reasonable Annual Depreciation Charges." In taking up these exhibits and discussing the figures and studies made, I feel it is necessary to discuss briefly the principles upon which such annual charges are and should be, in my opinion, determined, the purpose of such charges and the manner of their accumulation. My comments are confined specifically to the engineering matters involved. I believe, and I think our experience has
2022 shown, that the determination of and the fixing of annual depreciation charges is an engineering matter, whereas the reflection of those on the books of account, of course, is a matter of accounting procedure.

Respondent's Exhibits 41 & 42 described.

Practically all industrial concerns or public utilities subscribe to and adopt what is known as the straight line method.

Government insists on Sinking Fund method.

At this point counsel for the Government objected to any discussion of whether the straight line or sinking fund method should be used, on the grounds that it has become immaterial since the Department has followed the sinking fund method or a composite view, and this method has been upheld by the court. The objection was overruled.

(Witness continuing). Continuing my answer to your general question, it has been my experience that practically every industrial concern or public utility adopts what is known as the straight line method. This method consists first in the estimating of the reasonable life of a particular item and the salvage which the item may have at the expiration of such reasonable life. The net

Trans.

difference between the cost of the item and the
2023 estimated salvage is then divided by the number of years and a uniform rate established that will write off this amount over the period at the same sum each year.

As a variation of this method, but predicated upon the same basic computations, is the so-called sinking fund method, whereby the total amount, that is, the difference between the cost and the estimated salvage at the end of the useful life, is treated as a sum which would be required at the expiration of such life, and which need not therefore be assembled on a straight line basis year by year, but which may be obtained by setting aside annually an amount which, at a stated rate of compound interest, would develop such total sum required at the end of the period. For the purpose of providing for the return of a single unit of property at a specific date in the future, where such property is not subject to periodic renewal, it is quite possible, in my opinion, to establish a sinking fund for accumulating the necessary depreciation reserve. Where properties are such, however, as to be periodically renewed in whole or in part through regular replacement, I do not consider the sinking fund method to be applicable.

Sinking Fund method not applicable if replacements likely to occur.

This method, to work out in practice requires, and essentially, that the reserve shall not be disturbed throughout its accumulation. In other words, the fund set aside must be invested at the stated rate of interest immediately and the interest itself invested along with the succeeding year's reserve until the entire capital sum is returned at the end of the period chosen. The interest being actually and immediately invested, to get the
2024 element of safety required usually compels the placing of the funds in high grade securities or other investments bearing a low rate of interest.

Trans.

This, together with the fact that the fund should not be disturbed, has led to the term sinking fund.

The best example of an asset which would be susceptible to provide for depreciation or retirement through the sinking fund method would be a contract or a patent having a definite stipulated life, and to which there would be no additions or deductions during the period. A leasehold might be another example of an asset susceptible to retirement through a sinking fund.

Now, on a straight line basis, the life is figured in the same way but divided mathematically into the regular amount to be written off for depreciation each year. It has been my experience in actual practice that the straight line depreciation is also somewhat theoretical, and if the assumptions are accurately taken and the money were to be set aside, the amount would not require the earning of any interest in order to replace the item at the end of the period. It would not be good business practice, of course, to hold money idle in a reserve. For this reason it might be possible to invest such funds if the company were desirous of doing so. It would seem, however, that it must not be lost sight of that these funds are entirely and these amounts are entirely the property of the company itself. There is no particular need for the moneys to be invested, they might be paid as dividends, they might be used in any other manner the company might see fit to decide.

2025 Q. You are referring to the income derived are you not, rather than the fund itself to become the subject of dividends?

A. I am referring to the income that might be derived in building up a theoretical fund. In other words, if the funds were actually set aside at interest and this income were to be

derived from such funds, in my opinion, that income would belong to the company, and even if it could be used, which in a complex property would be very doubtful, for extensions to property, nevertheless it would be moneys invested in that property which in turn would be entitled to a return on such investment.

Q. And it is the income which becomes available for the declaration of dividends?

A. That is correct, yes, sir. Specifically on the sinking fund and its operation, and assuming that such an annual amount were determined, I would consider that if it were tied up in interest bearing securities, some provision would have to be made for an independent fund to take care of the necessary replacements. If the fund were used for additions and betterments to the plant, new capital would have to be used for replacements. If there were no additions or betterments to the plant being made, and the fund was not invested in outside securities, there would be no use for the fund in the business and in fact it could not operate at all.

Q. In your experience, Mr. Hyder, have you found the sinking fund method actually used by industrial concerns?

Sinking Fund not adopted in practice.

2026 A. I have never found the sinking fund method adopted in actual practice, with the exception, as I have stated, that occasionally for purpose of retiring a contract or a patent or a leasehold or some fixed and definitely known obligation, it has been possible to adopt such a method, and in certain instances I have seen this done, but as a whole I have never

Trans.

found any industrial or public utility company adopting the sinking fund method in actual practice.

For about fifteen years I have had experience in the appraisal of stockyards and in studying depreciation of stockyard properties and substantially throughout that entire period I have been familiar with the property and problems in this regard of The Denver Union Stock Yard Company.

Experience in depreciation of Stockyards.

As I have previously testified, the straight line basis is the usual basis or method adopted for this purpose in industrial and public utility properties. In Respondent's Exhibit No. 41 I have developed the annual amount in dollars that in my opinion would develop through the establishing of the normal expectancy of useful life of the respective property items throughout The Denver Union Stock Yard Company properties.

Straight line method generally adopted.

2028 As I stated, the exhibit is built up in detail on the basis of an engineering estimate as to the reasonable expectancy of life of the various items in the property which in turn divided into the cost of reproduction new develops a rate and ultimately the amount of depreciation reflected for each of the years. In this connection, it is my judgment, based on my experience, that there would be virtually little, if any, salvage that would be realized from the stockyards property at dismantlement or at the end of the estimated useful life. Therefore, for all practical purposes, whereas the theory has been maintained, for all practical purposes I have disregarded the salvage and have estimated the entire property to be retired in establishing the amounts. Just briefly referring to this Exhibit 41, the letter of transmittal consists of three pages, and sets out at the middle of the third page a grand total of \$124,798 which, in my opinion, constitutes the to-

Trans.

tal amount of depreciation per annum as applied strictly on a straight line basis. Now, while I
2029 subscribe definitely to the straight line method of depreciation, especially in stockyards properties, I find that there are certain factors involved which, in my opinion, would have to be recognized in determining and recommending the proper annual depreciation rates and charges. Therefore, as basis upon the complete study of the straight line method as shown in Respondent's Exhibit 41, I have prepared a further exhibit, Respondent's Exhibit 42, which develops in detail the investigation and conclusions which I have made in connection with this exhibit for The Denver Union Stock Yard properties.

The letter of transmittal which accompanied Respondent's Exhibit 42 reads as follows:

"May 29, 1935.

"The Denver Union Stock Yard Company,

Denver, Colorado.

Gentlemen:

"The questions involved in the fixing of proper annual depreciation rates and charges embrace matters of accounting, engineering and business judgment, and for any particular enterprise specific conditions may be a large factor in determining the method to be adopted and the manner of application.

"Based upon a detailed study of the properties of a considerable number of public stockyards carried on for the past fifteen years, I have worked out a plan from an engineering standpoint that I believe is practicable and that eliminates the greater part of the objections advanced to the adoption of the usual methods of establishing proper depreciation charges in other industries.

Trans.

"This plan is predicated fundamentally upon the fact that the stockyard facilities, while simple in the nature of the individual structural units, are extremely complex as an entirety. A portion of these facilities consist of assets having a definite expectancy of useful life and the remainder, a very substantial proportion, consist of assets having an indefinite or indeterminate life as a part of the whole, and which are, in actual practice, held from year to year to a certain standard of condition, value and expectancy of remaining useful life through regular expenditures in current maintenance expense.

"These indefinite life assets have in themselves variable life expectancies, but in general relatively short as individual units, and the depreciating of such items upon the same basis
2031 as a regularly diminishing asset, such as a building, results in a short time in a wide discrepancy between the current value of the asset and the amount set aside in the depreciation reserve for its retirement. If a satisfactory distinction could be drawn between the repairs and replacements or renewals comprising the constant stream of 'maintenance' which in itself brings about the indeterminate nature of such assets, much of this discrepancy might be avoided but no satisfactory or practical distinctions can be made.

"From a practical business standpoint, however, the initial capital investment must be protected from possible changes in the requirements and probable major reconstruction upon an entirely different design or arrangement in order to meet the needs of the service, irrespective of the assumed continuity of life.

"The plan, therefore, provides for the setting out of all items having a reasonably determinable expectancy of useful life and which must be replaced as an entirety at one time and computing the proper depreciation charges thereon separately from those items having a continuing 1093
or indeterminable life as used in the operation

Trans.

2032 of the stockyards. To the amount of the depreciation charges computed for items of definite life, would be added an amount to provide for extraordinary expense or general obsolescence that would provide primarily for the major removal and replacement of indeterminate life items from time to time while they are still in normal operating condition. The total of these amounts would be considered as the annual charge to depreciation reserve. Under this plan, withdrawals from the reserve would be limited to the replacement of items included in the definite life classification or for expense incurred as the result of general obsolescence.

"The continuity of indefinite life items would be provided for in the actual maintenance expense, as incurred each year, which would of necessity be considered as not only a maintenance account but in addition would contain all minor and regular renewals and replacements of such items. Further, the minor expenditures required to keep the definite life items in proper usable condition, but which did not extend their expectancy of life, would be carried in the regular annual maintenance expense.

2033 "For example, in the Denver Union Stock Yard property the Exchange Building is assigned a definite life and a regular annual depreciation charge determined. For the cattle pens, however, the annual maintenance would include regular piecemeal renewals and replacements of fences, gates, paving, mangers, water connections, etc., and would be carried in expense as incurred, thus providing for the continuity of the pens in their existing form and condition. Extraordinary changes and resulting blanket replacements would be provided for in obsolescence fund.

"I have made such a study for The Denver Union Stock Yard properties and the results and details are attached. It shows that the annual amount to *depreciation reserve* totals $73,080.00, of which $58,090.00 is depreciation as provided for periodic retirements and re-

Trans.

newals of definite life items, and $15,000.00 is the reserve for general obsolescence.

2034 SUMMARY

	Cost of Reproduction New	Normal Annual Depreciation	Obsolescence	Total
Definite life items	$1,742,968.00	$58,080.00		$58,080
Indeterminate life items	1,194,703.00		$15,000.00	15,000
Total Depreciation Reserve				$73,080

Maintenance Expense:—Including minor renewals and replacements of indeterminate lived items amounting to $1,194,703.00 as regularly and annually incurred."

At this point the witness interjected the following explanation: I am aware that if the two figures shown in the first column of this summary are added, the result is $2,937,671.00, whereas the total shown on Respondent's Exhibit 41, Sheet 4, is $2,937,672.00. That discrepancy results from the fact that in the detailed appraisal all items were carried out to the cents column whereas in these exhibits the items have been carried to the nearest
2035 dollar, omitting the cents. In the two exhibits there was simply an inconsistency perhaps in getting the totals, so there is actually $1.00 difference although they represent exactly the same property and the same detailed figures are behind them.

(The letter concludes as follows:)

"The past experience of the Company as to the annual maintenance expense is not necessarily to be considered as indicative of what this may average in the future. It is probable that this will increase but this is largely speculative and under this plan must be provided for as the condition arises.

"The details supporting these estimates are attached hereto and form a part of this report.

Respectfully submitted

THE AMERICAN APPRAISAL COMPANY 1095

By K. Lee Hyder,

Supervising Engineer."

Trans.

Annual depreciation reserve.

2036 (Witness continuing). In my judgment the $73,080 per annum would be the proper amount to set aside to the depreciation reserve on the respondent's property under the conditions prevailing as of December 31, 1934. This is built up from the normal annual depreciation as applicable to the definite life items of $58,080, and a reserve for extraordinary obsolescence to provide for the retirement of both definite and indefinite life items that may be required prior to the end of their useful lives and which I have estimated at $15,000, or making a total of $73,080. A depreciation reserve in that amount will, in my opinion, provide a sufficent amount for all normal retirements and replacements, predicated upon the assumption that the stockyards property will operate continuously or indefinitely in the future. The reserve, together with the annual expense incurred in maintenance and repairs, as normally provided and set up by the company, will keep the property operating in normal condition at all times. It will not provide, however, for the retirement of any capital represented in the investment in what I have classified as indeterminate life items. That is, the cattle pens, underground construction, and all of the yards
2037 area which is continuously maintained in substantially the same condition from year to year by regular expenditures in maintenance and repairs will theoretically not depreciate any further than at present, as long as such degree of maintenance is continued. The tearing out of such facilities to provide for normal expansion, changes in operation, and other similar requirements, is taken care of in the general obsolescence amounts which would be placed in the fund. There is no provision, however, for the return of capital at any time in the future on the indefinite lived items.

Trans.

In other words, my computation provides simply for keeping the property in operating condition at the regular standards required for efficient service upon the principle that the yards will operate as a practical matter almost in perpetuity.

In principle, I believe that capital is entitled to protection through a guarantee of its ultimate return when and as the investment reaches the end of its useful life. However, from a practical standpoint I have noted from my experience in the stockyards that they are necessarily kept to a certain standard of condition and efficiency from year to year, with very little, if any, change in the relative condition as compared with the new. When I speak of "conditions" I am speaking of its entire set-up as an operating property.

2038 The only reason, therefore, for an additional allowance to the amount which I have established would be upon the expectation that owing to some economic change in the handling of livestock, the yards would ultimately have to close down and the company go out of business. While this might theoretically be the case, there is nothing at present in the outlook that would justify such a position, and I feel personally that until such a contingency should arise, the setting aside of any additional amount for this purpose would simply build up an excessive depreciation amount, without any certainty that it would ever be required. In my opinion the amounts that I have established are fair and reasonable both to the capital invested and to the properties and the users of the service.

I heard Mr. Bufkin's testimony on this question of annual depreciation expense and allowance.

Q. What have you to say, based on your experience in such matters, as to the relation, if any, that does or should exist as between

Trans.

the depreciation reserve account on the balance sheet of a corporation and the what might be termed observed condition of the property for which the reserve is set up?

A. I am answering that question now, of course, as I have previously stated, from the engineer's viewpoint. I am not an accountant, but I am called upon repeatedly to consult with accountants and with the executives in the analysis of the depreciation amounts and

2039 figures. From the engineering viewpoint, however, it seems to me that there is no relation necessarily and I have found it very seldom, in fact, between the depreciation reserve on the books of a company—the amount reflected in the depreciation reserve on the books of a corporation—and the actual condition of the property at the moment. The depreciation reserve is nothing more than accounting for depreciation, that is, for ultimate retirement or replacement, and is not any measure of the condition of the property or the condition of the property as actually existing. This reserve may be wholly a matter of bookkeeping or an actual fund might be accumulated consistent therewith. A concern which attempted to maintain a theoretical balance would be operating on a hazardous basis, in my opinion. At any moment, particularly in a stockyards enterprise, a change in economic or operating conditions might compel the tearing out of substantial construction still in good condition; under a perfect balance between an accounting for and actual depreciation, the investment in the facilities scrapped in advance of the end of their normal useful life would, in such circumstances, be a total loss and could not be recovered.

Trans.

(Witness continuing). And that is the reason why, in my opinion, there can be no balance between observed depreciation and the depreciation reserve, and in fact I seldom find that there is a balance and I don't believe there should be a bal-
2040 ance. If there are risks to the continuity of the property, that may occur at any moment and they are not provided for, which of course would be the case if the two balanced. That, I think, would be a grave error on the part of the operating corporation.

2041 Referring to Government Exhibit 41 and the last page of that exhibit where it contains a hypothetical comparison of straight line and sinking fund methods of depreciation, this comparison is apparently based upon an assumed $100,000.00 of depreciable assets, having a composite life of ten years, compounded at the rate of 7 per cent semi-annually. That computation, in my opinion, has no applicability to this particular proceeding. In my opinion, it does not illustrate the sinking fund method, but I do not believe that it applies in any sense to the method that is being used in establishing the value and the fair return on Respondent's property. The table sets forth an assumed investment having a gross book value of $100,000.00 at the time the investment was made, and having an assumed life of ten years. Each six months during this period of ten years, an amount of 7 per cent is set aside as a return on the investment, and in addition an accumulating fund is provided which, placed in investment at a 7 per cent rate of interest, will, at the expiration of the tenth year, result in a total sum of $100,000.00, or the initial investment.

Government Exhibit 41 criticized.

Theoretically the table appears to be set up in a manner that would accomplish just this thing. The particular point, however, to which I will take ex-

Trans.

ception in the present case is in the computation of the rate of return which is provided on the basis of 7 per cent of the original fund for the entire ten-year period. If we were to assume that the assets which this $100,000.00 purchased actually would be required exactly at the end of the tenth year and the moneys could be invested on the basis of 7 per cent immediately upon their availability, or each six month period, then there is no question in my mind but that the $100,000.00 would be returned. That is a matter of exact mathematics. Nevertheless, if this were done, in order to prevent any confiscation of the original investment in the property, the net return allowed throughout each of the ten years would have to be computed on the basis of 7 per cent against the full $100,000.00. This would be true inasmuch as the interest on the sinking fund, for which the depreciation or the retirement was being established, would have to be returned to the fund at all times and therefore would be no part of the original or basic 7 per cent return on the investment.

In the present case, or in the stockyards case, the conditions are entirely different; in fact, they
2043 are different, in my opinion, on any typical rate proceeding. This is brought about primarily by the fact that the face value upon which the fair return is developed includes the cost of reproduction of the assets less depreciation. In other words, at the date of inquiry the rate base, at least that portion of the rate base represented in the physical property, is a depreciated base. Now, if in this example we were to assume anything less for any one of the years from January 1, 1920, until the expiration of the life of the assets, an amount less than $100,000.00, and compute our 7 per cent return on such amount, the difference between the return so computed and $7,000.00 per annum, being

Trans.

7 per cent on the initial investment, would represent the amount by which the corporation failed to earn a fair return on their investment. For that reason I believe the exhibit is not informative and does not in any way tie-in with the plan or program which the Government has used otherwise in establishing the value and fair return on the property.

My criticism then, using the present figures, is this: That assuming a rate of return of 7 per cent the Government method in this and any other cases has been to figure that return upon what they find to be their construction new value less depreciation; so that so far as this example goes in order to make it even remotely pertinent, the Government method would have to be figured on the rate of
2044 return upon my reconstruction new value, and if they did not it would represent an actual confiscation in the sense that the owner of the property would not have received a return on his investment at the rate adopted for the life of the investment.

Q. Now, you also stated that in your opinion, taking this example sheet 20 of Government Exhibit 41, it would return the $100,000.00 if left to operate exactly as shown there in that tabulation, but I am asking you would that $100,000.00 be returned under that example or under any sinking fund example of Mr. Bufkin's if the income from the invested installment were used for dividends or for any other corporate purpose other than replacement in the property?

A. No, sir, it would not be returned from the fund which would be available for this purpose. In other words, if the amounts so invested were less than the straight line depreciation which could be reflected for each

Trans.

of the periods, then to that extent the initial capital would not be returned.

2045 (Witness continuing). Assuming as a matter of law that any earnings made by investing this depreciation reserve in stockyard property would be income to the corporation available for dividends, income upon which the corporation must pay, under existing laws, an income tax, income which absolutely as a matter of law belongs to the stockholders, in my opinion the only way in which the sinking fund method proposed by the Government in this case could operate is for the corporation, or the stockholders rather, to release their right to that money and have it put in the depreciation reserve.

2046 I stated in giving my qualifications that as a regular part of my duties I have computed the value of intangible property as well as appraised the physical property of public utility companies. In both these and many other cases I have made a study of the elements of value which may be included under the general caption of going value. My study of other concerns has included those operating both in the industrial and the public utility fields.

Hyder on Going Value.

Many appraisals which I have made or directed have been for the purpose of merger or consolidation in some form or another. In a number of cases of this nature I have actually prepared studies not only of the physical property but on the intangible elements involved and have later sat in at the meetings at which the financial and other considerations have been determined. In such cases one of the most important elements is the measure or relative measure of the value of the respective enterprises as going concerns. That is not only as to the direct appraised investment involved but as to the value of the business elements and other

Qualifications as expert.

Trans.

factors that must be considered in determining a new capital structure as well as the percentage or portion of the securities therein that may be represented by the assets of the respective corporations.

2047 For example, oil refineries,—I served in the capacity of establishing the value of properties in business for the merger of the group of oil refineries in Western Pennsylvania. I have also served in this capacity in several instances for the merger or consolidation of concerns engaged in the exploitation of natural resources, such as sand, gravel, stone and other similar types of industry. I have served in this connection in the building up of drug store chains and the merging of the business of drug companies. Others that might be mentioned are concerns involving laundries, laundry routes, creameries, milk routes, outdoor advertising, grocery store chains, women's wearing apparel and quite a number of what might be termed manufacturing or industrial enterprises.

The establishing of the value of intangible property, that is so-called going value, for public utility properties for which we have made appraisals has been under my general direction and supervision for a number of years. I have personally handled many of these studies and in most of the instances at least during the past several years I have reviewed or passed upon the final conclusion even if handled by someone else in my organization. In 1927 I spent some months, in fact I think about eighteen months, in establishing the going value for carrier operations of the Pullman Company. This Company controls about 97 per cent of the
2048 sleeping car business of the United States, and to my knowledge this was the first attempt made to establish the intangible value inherent in the company. It was obvious from the start that there were

no precedents laid down as is the case in many public utilities where some studies have been made in the particular type of industry. It was, in other words, an investigation into unknown territory and the results were finally submitted as a part of the entire proceedings before the Interstate Commerce Commission in the investigation of Pullman rates and charges. I have made studies of going value and the matters in connection therewith for many utilities, including the Lone Star Gas Company, the Indiana Gas Company, the Milwaukee Gas and Light Company, numerous bridges, some phases of electric light and power companies, such as Niagara Falls Power Company, and others. I established values in connection with the bridge heads and franchises incidental thereto for the Vallejo and Antioch bridges near San Francisco.

Going Value defined.

As a blanket term, it is my opinion that going value as applied in public utility rate making practices is related to those values and elements of value that inhere in a going operating property and are represented in the established business organization and other elements incidental thereto, that are in-
2049 dependent or over and above any direct investment of the land and structural improvements. It is my opinion that the concept of going value is no different in a public utility than in any other type of industry. The term is developed automatically from the logical and reasonable assumption that any going enterprise with an established business, a staff of employees and established credit, and other factors essential to operation, and which has required years to bring about, is worth more than the value of the physical asset which the company may be using in conducting its business. The distinction between the usual privately owned industrial enterprise not under regulation and that of public utility comes about primarily from the fact

Trans.

that some element which may exist by virtue of established good-will and earning power of an industrial enterprise, strictly, may not be proper for consideration when establishing the value of the public utility enterprise for rate making purposes. It is my understanding that the value being searched for in a rate inquiry is termed "fair value." The United States Supreme Court has, in a number of cases, laid down in its decisions that present value should be given great weight in determining this fair value. In actual practice this means that the investment reflected in the books of the public utility corporation may or may not be indicative of the value of its assets and therefore in the attempt to find fair value present cost or the cost of reproduction new must be given great weight.

When I state that certain things may not be proper for consideration when establishing a value of a public utility enterprise for rate making purposes, and a little bit later speak of fair value, I have in mind the fact that in most public utilities there is a franchise or monopolistic element as distinguished from the ordinary business.

2050 In addition to that, there is, of course, in the private industrial enterprise, no particular necessity of divorcing or attempting to analyze the source of income or earnings. In a rate inquiry, the ultimate purpose is to establish a proper and fair level of rates, which in turn, in the process of being established, requires the fixing of the fair value of the property and the fair rate of return upon which the level or total amount to be developed as a net profit from the schedule of rates will be fixed. Now, in a private industrial enterprise where earnings are not under control, it is quite possible and frequently occurs that the intangible values are 1105
lumped in what might be called commercial good-

Trans.

will; that is, through the capitalizing of what might be termed surplus or profits in excess of a reasonable return and not attempting to distinguish the actual value that inheres in the business and organization, but simply lumping this with whatever favorable profits may be being earned at the time. That calls for the definite distinction from one standpoint and, of course, in addition, the monopolistic feature that exists to some extent in most of the regularly recognized public utilities would be an important consideration.

2051 In my opinion a fair value of a public utility for rate making purposes could not be determined without a consideration of going value or the elements that produce it in addition to the cost of reproduction new less depreciation.

In practically all of the investigations I have made there has been some occasion, at least, to study the business of the companies themselves. I believe I have had an unusually favorable opportunity to become familiar with this situation over the entire period of years of my experience. In 1920 I served on a special committee appointed to visit most of the larger stockyards markets in the United States and assemble information to be used in connection with the so-called Consent Decree, whereby the stockyards properties were to be divorced from the packing house properties. While my direct work on this committee was confined to the study and

Stockyard experience gives effect qualification.

2052 valuation of the facilities, nevertheless I had unusual opportunities to meet with most of the larger stockyard operators and to gain thereby a considerable fund of knowledge of the industry. Subsequent to that time, I have, as stated, appraised many of the properties of the stockyards companies and in some instances the investigations and appraisals have been carried on not only for the initial year,

Trans.

but for the subsequent years thereafter. At Omaha, for example, I made the first appraisal in 1922 and since that date I have made an inspection and report and appraisal for each of the intervening years. This has required my being in Omaha on the average of three or four times a year and usually has consumed in total a number of weeks each year. At the time of the creation of the South Omaha Terminal Railway, I assisted and supported the establishment of the figures at which the new company was organized. I have worked closely with the accounting officer and records of the Stock Yard Company throughout this period, have followed the ups and downs of business, and sat in during periods of litigation involving various phases of operation. About January, 1927, I was retained by the Cincinnati Union Stockyards Company to represent them in the proposed rearrangement of the stockyards property and the sale and purchase of lands incident thereto. The B. & O. Railroad Company had been attempting since 1913 to effect some arrangement whereby they could increase the size of their railroad yards at Cincinnati and had in mind that certain properties of the Cincinnati Stockyard Company would be needed for this program. My work consisted at first of conducting negotiations with the representatives of the B. & O. in the transfer and rearrangement of lands. I was able to bring this to a successful conclusion in a period of about six months. The final arrangement involved the relocation of the B. & O. right-of-way and the turning over thereby to the Stockyards Company of lands formerly occupied by the former right-of-way, the sale of some improved and some unimproved lands of the Stockyard Company to the Railroad, and other minor details in connection therewith. Fundamental to the consummation of the transaction, it was necessary to very carefully 1107

study the business of the company and make studies of proposed layouts under different plans to arrive at the most satisfactory way of accomplishing the purpose for the best interests of both corporations. When the deal had been consummated, I then acted as a consultant to the Ferro Concrete Construction Company of Cincinnati, Ohio, which was employed to construct the new hog house and other facilities brought about by the rearrangement. It was necessary in this capacity as consultant to consider very thoroughly the requirements of various classes of livestock and other business elements of the Stockyard Company in order that the facilities might be laid out in the most efficient manner. Following this and more or less as a direct result of the work, I carried on from time to time discussion and negotiations with a local packing concern known as E. Kahn Sons of Cincinnati, who at that time had their packing plant some two or more miles removed from the stockyards. Immediately adjoining the stockyards plant was the site of the old packing house known as the Cincinnati Abattoir.
2054 It had not been operating and it was proposed to have E. Kahn Sons take over the property under lease and construct a new packing plant in order to build up the business of the Cincinnati yards. These negotiations were successful. The packing plant was built, the facilities were designed substantially to develop both the packing business and the stockyard business, and I understand that during all of these years the arrangements have been most satisfactory.

I have represented my company in many appraisals of packing house properties, a number of which were located at the various stockyards markets where the properties of the stockyards companies are located. For example, at South St. Paul, I appraised the packing house of Armour & Com-

Trans.

pany chiefly for the purpose of determining the question of obsolescence of packing house properties through over-capacity. To establish these figures, I was compelled not only to go into the business of Armour & Company and the general factors involved in the moving of meat products, but also the potentialities in livestock receipts at St. Paul, and the very important element involved in existing packing house facilities in so far as the stockyards business was concerned. My studies in this connection were later accepted and the principles laid down by me at that time were supported by the Minnesota Supreme Court. I have also examined the books of account and other records furnished to me by various stockyard executives, showing the actual investments made by these compan-
2055 ies in building up their business. As I recall, in virtually every instance I have found that the Stockyards Company over their histories have made very substantial expenditures in developing the market, which in turn, of course, resulted in the increase in the volume of their business and justified them in making such expenditures. I have none of these details with me but I can recall, for example, that at Omaha an expenditure totaling approximately $2,500,000.00 was made over the history of the company.

Elements of value over value of physical assets.

Based upon all of this experience which I have had I have given a great deal of consideration to the going value or elements of going value of The Denver Union Stock Yard properties, and as a result of that consideration, I have formed some rather definite opinions. Over the period of fifteen years of my general knowledge of the Denver and other stockyards, I have spent, I believe, approximately 25 per cent to 33-1/3 per cent of my time in stockyards or allied work. It is my opinion in the case of the Denver stockyards that the company pos-

Trans.

sesses, as of the current date, many of the elements
that tend to create value in excess of the invest-
ment in the physical properties, some of which
would include an established business dating from
1886 and showing in a broad way a very favorable
development, with substantial stability in volume
over at least the last fifteen-year period, a busi-
ness that on the face of the records available, dur-
ing my various investigations and as brought up to
date at this time would indicate to me a normal

Established volume of business.

volume of approximately 35,000 carloads per an-
num in receipts of livestock. This carload volume
is measured by placing the truck-in receipts on a
carload equivalent and adding these to the actual
rail receipts. Next, I would say that the company
2056 has an established organization consisting of the

Established Organization.

executive and personnel who have from my own
knowledge and from others with whom I consult-
ed shown definitely that they possess the qualifi-
cations which have been assembled into a per-
manent and efficient working unit, with wide ex-
perience in all matters relating to stockyard opera-
tion. With this have been developed records and
systems required and devoted to the conduct of
the business essential to its operation. From my con-
2057 tact and studies with the company and its proper-
ties, it is my opinion that it has a sound and well

Established Credit.

established credit, demonstrated by the public con-
fidence in the securities which the stockyards com-
pany has outstanding and which has no doubt re-
sulted not only from the regular increase in and
the stability of the business itself, but also from
the aggressive, continuing efforts of management
to build a strong and sturdy enterprise. The com-
pany possesses, to my knowledge, an unusually bal-
anced layout of facilities that permit the maximum
of efficient handling of livestock and the furnish-
ing of the best possible service to the user of the
market.

Trans.

These conditions result from actual investment.

There are also other factors. One of the most outstanding factors was the consideration, in my opinion, of the fact that these conditions have not resulted automatically through the general growth in population and livestock production, but have actually come about to a considerable extent by outright investment upon the part of the company. I knew, of course, before and have now heard Mr. Pexton's testimony showing that the company has expended upwards of $325,000 in developing the market. In looking over his list of expenditures as compared with other costs involved directly and indirectly in building up intangible property, I believe he is ultra-conservative and has eliminated many other expenditures that might very well be recognized as having added to the value of the property. An analysis of business trends historically shows to me that these expenditures must have resulted and did result in increased volume.

Established Market.

2058 The established market is, of course, a very valuable asset. To a still greater extent, however, I believe it is an asset that reacts to the benefit of the shipper, that is, to the user of the service. Without such established market the business of the stockyard company would, of course, be greatly reduced if not actually expired. The market is primarily brought about by the purchase of livestock or by virtue of the guarantee of such purchase almost immediately upon receipt at the market. This condition is reflected to a substantial extent at least through the existence of the larger packing plants of Armour & Company, Swift & Company, and Cudahy and Company, all located at the Denver yard and buying livestock for slaughter.

It is problematical which expenditures might be required at this time to duplicate the present pack-

ing houses and other advantageous industries if they were not already existing. That it has cost substantial amounts, however, seems to me to be the best possible evidence that similar costs would be incurred today and very likely such costs would be greatly increased. If the large packing houses were not at Denver, it is probable that packers under the present business conditions would not be willing to make any substantial investments toward that end. In this connection it must be remembered that the market, while resulting to a large extent from the expenditures of a stockyards company in the past, has attained its much larger size and stability from the much greater expenditures put in by the packers and others who were first induced to come here by the foresight of the stockyards company.

Amount in dollars of going concern value difficult to ascertain.

2059 It is difficult to place a definite money measure on the elements of going value. It is not so hard to discover an inventory of such elements, but to place a dollar and cent figure is entirely a different story. However, based upon my experience not only at Denver but at many of the other stockyards, I am inclined to believe that the value over and above that of the physical property might be susceptible to reasonable measurement upon two basic considerations: first, by a study of the combined history of the stockyards industry in building the markets and business volume and other intangible property throughout the country, as measured by the historical records of direct investment; secondly, by the generally recognized "across the table prices" that are paid for established businesses in other industrial lines.

Two considerations for measurement.

1. Historical Investment.

1112

I have also brought out the fact that the records of most of the companies show substantial invest-

Trans.

ments that are not inconsistent with the actual recorded expenditures in business development by The Denver Union Stock Yard Company.

2. Arms length bargaining in industry.

Turning to the other angle, it has been my experience in actual practice that business volume is bought and sold on the market irrespective of the net profit, although the net profits potentially might be a factor considered at more or less definite rule of thumb prices. For example, concerns
2060 assembling or disposing of filling station sites where an established retail business exists, recognize about ten dollars per one thousand gallons of sales per annum as above the average amount that should reasonably be paid. This is over and above their direct investment in land and improvements.

Milk supply fields have transferred on the basis of from $1.00 to $1.50 per pound of daily supply with a reasonable average of about $1.25.

Newspaper circulation has been bought and sold on the basis of approximately $10.00 per subscriber.

Laundry routes at approximately 15 per cent of gross volume.

Even such businesses as towel trade routes and other small enterprises who have built up an established volume of business are recognized as worth approximately $15.00 for one dollar of weekly sales volume.

In the case of public utilities studies of the cost development in many instances has shown, for artificial gas companies, a range of fifteen to twenty-five dollars or more per customer, and not far from approximately the same figures for electric companies and telephone companies.

Trans.

It is practically universal in the industrial and non-regulated fields that business volume, which automatically includes all of the elements of going c ncern values, are recognized as adding definite value to the assets of the corporation. It is true that strictly on industrial transfers, so-called commercial good-will, that is, the demonstrated past profits above what might be called a reasonable return and which I have previously discussed at some

2061 *length, are a big factor in the* selling price. It has been my experience, however, that in many instances approximately the above figures which I have quoted have been paid not only for profitable businesses but simply to get the volume, even though the company possessing had for some other reason been unable to earn a reasonable return.

In my present appraisal I have limited my detailed exhibits to the physical property only. In the 1930 appraisal of the property, I made some studies as to the reasonable cost of development; that is, the expenditures theoretically which would have to be made in bringing the company to a status of normal operations following the completion of the physical property. These studies were predicated upon the opinions rendered by several of the commission men and others as to the period of time that would be required to reattach the business if it were to have been lost during the period of time to construct the facilities. The weight of opinion, as I recall, was that this would take not less than five years, and the studies made at that time indicated carrying charges on the physical property of not less than $200,000.

I have made no estimates in this appraisal as to the carrying charges on any period of years or any attempt to establish the cost of reproducing

1114 the business in case it did not exist. Undoubtedly

Trans.

such a study would show substantially the same figures. I did not offer this computation in 1930 as a measure of going value but simply as one element of the cost of reproduction new. I have no mathematical basis that I believe would accurately establish my opinion of value at this time. It certainly should be no less than the demonstrated
062 investment of the company if such investment is represented in property which still exists. Since the packing houses and other related activities for the primary purpose of establishing which the investment was made are still available, and in themselves represent much greater investment brought about by stockyards expenditures, then there is no doubt that the factors are still in existence and should be worth at least their cost.

Taking into account the character of the stockyards industry as compared to that of other industries, the general nature of the business itself, it is my opinion that the elements of going value at Denver are worth not less than $10.00 per car of normal or reasonable annual volume, which for 35,000 cars, would be $350,000. This would be the minimum, in my opinion, and if capital should come to me with the request that I establish a price which they could afford to pay to purchase the assets of The Denver Union Stock Yard Company as an alternative to making a similar investment in purchasing the land and developing a new stockyards, I would very likely recommend a considerably higher figure than the $350,000 minimum to which I have just testified.

Amount of Going Concern Value.

063 Summing up my testimony then my opinion is that there should be included in the rate base of The Denver Union Stock Yard Company not less than $350,000 on account of the going value of said stockyards as of the date of this investigation.

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Cross-examination

2064 As I have stated on direct testimony it is my opinion that the inventory upon which the cost of reproduction new is fixed and the resulting figures developing the total cost of reproduction new as established by Mr. Zelinski is substantially sound and correct.

In my opinion it does not vary from the figures which I personally established of the cost of reproduction new any more than would be anticipated from two equally competent engineers approaching problems and arriving at their results and for that reason I stated that in my opinion the Government figures were substantially correct for that portion of the exhibit. I am speaking now of the cost of reproduction new of the structural improvements on the property. I am not speaking of depreciation. As to that, I disagree with the Government because I believe that the Government condition per cent is substantially too low.

2065 I have had employees working with me, Judge, in each of appraisals I have made of the stockyards property over the various years. In fact, I have had one principal engineer who has been a direct assistant of mine for a great portion of that period. In addition to that, other men, other engineers, were engaged in the work from time to time and I have had the benefit of their judgment and their studies of the different property. However, as far as depreciation is concerned I personally either actually reviewed all of the figures in detail as against the property itself or made an independent complete examination of the property and therefore the depreciation as established is based upon my own inspection. That refers to virtually all of the appraisals I have made and specifically to

Trans.

1935. In 1935 one engineer only assisted me in the inspection of all of the property, that is, I inspected it and he, too, inspected substantially all of it. He was familiar with the yards, has been there on several occasions. In order to state how much
2066 time this engineer actually spent in inspection of the stockyards property with a view to determining depreciation, I would have to make just an estimate in a general way inasmuch as I have not the time sheets divided in that way, but I would imagine he spent several days in just the final correlation of the inspection he had made, probably just the same as I did in my own personal inspection.

As to the duration of my own personal inspection for this 1935 appraisal, I would say the better part of a week was devoted entirely to the inspection of the property itself, in relating and determining the condition and depreciation. However, from time to time through the work notes as to the conditions that were found, of course, were made and tabulated, upon which basis, of course, the depreciation was ultimately determined.

When I use the phrase "from time to time" I mean not only in previous years but actually in this current investigation. For example, I came out here the latter part of July, 1934, and I spent some time at the yards, I have forgotten just how much, and laid out the general work, the work to be done at that time. I was back again at a later date and finally came out in January to complete the work and made a final determination and inspection at that time and was here possibly a week or ten days then.

2067 Referring back again to the time spent by the engineer I would say roughly from my own opinion that he spent close to a week inspecting the property with a view to giving his figures as to the

Trans.

accrued depreciation. As a matter of fact a good deal of the inventory was accepted or could be accepted as having been not changed from the previous inspection or investigation that had been made. Some changes, of course, had taken place and these, of course, were recognized in the inventory of the property at 1934, December 31, 1934, but a great deal of it had not been basically changed, that is some of the building, many of the buildings and other types of construction. Therefore a large portion, I might say, of all of the time spent in the 1934 appraisal was devoted to the study of the condition of the property, their relationship as a whole.

After this engineer made his inspection he made a detailed report establishing his conclusions and opinions, and his percentages as he considered them for depreciation on all the various items of the property. This report was made to me. I then took this report along with my own. I accepted his statement and his opinion for what they were worth and wherever there was any particular discrepancy I went back to the yards and looked at it myself to establish my own opinion, whether or not it coincided with his or not, and if I found I had been in error, of course, adopted it, but it was my own opinion, my own final conclusion. However, I found very few discrepancies because this same engineer has worked with me on The Denver Union Stock Yards for a number of years. He is very familiar with the properties and, of course, I am very familiar and we have had these discussions from time to time in the past so that we have already discussed to a considerable extent the general condition of the property.

1118 Referring now specifically to the Exchange Building, I figure that that building, on the basis of an-

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nual depreciation, has a life of 40 years, not 40 *years from* the date of its construction but theoretically 40 years from the date on which a building of that type and character was constructed.

68 Primarily several structures in the stockyards property would have as long a physical life as would ordinarily be assigned in the study of any type of operating property. For example, the Exchange Building and the reinforced concrete sheep house. Both of these structures would have almost indefinite physical life and it would be very difficult to determine. Therefore, in considering their useful life you must anticipate that structural obsolescence or some other factors might develop which would mean the necessity of accumulating a reserve for their return in something less than the net physical life. In other words, I have adopted 40 years as the maximum that you could reasonably look forward to in the cycle of this property if it were to be constructed new for the limiting life or the longest life asset.

69 The oldest Exchange Building, according to the information I was able to obtain, which building is known as "U-2," was built in 1898. It is, then, 37 years of age. However, I would not say that there remains only three years for that building before it is retired. The mathematics are correct, but, of course, the very reason that I first stated that I did not use the life itself speaking of accrued depreciation is that the estimate as to the useful life of the buildings or structure at the time it is built has no particular bearing on the remaining expectancy of life or its condition per cent, if you wish, at the time you make the inspection, for many reasons.

70 Taking that building and assuming that it was assigned a 40-year life at the time of construction

Trans.

that would be a 2½% straight line depreciation per year and on the basis of an elapsed time of 37 years the depreciation reserve on that straight line basis would be 2½ times the 37, or approximately 87%. However, I have not established my inspection on the basis of remaining life. Speaking of that building in particular, it is quite possible it would be retired within a comparatively reasonable period in the future. The reason that the figures that you have established cannot be adopted in applying to any particular date of inspection is because the conditions change from the date on which the estimate is made. Now, another factor that is, of course, involved in all property, is the replacement of parts. The life may be properly estimated, but if expenditures are made from time to time throughout the use of that property, as
2071 is always the case in a building subject to such continued use, then, of course, the tendency is to extend not only its economic life, but its physical life more or less indefinitely. For that reason, the expired life has little relation to the accumulation that might be set up for its retirement.

Q. Mr. Hyder, I would like to get your viewpoint on this. I will use these figures simply to illustrate. You need not assume them, but if the Exchange Building depreciation reserve was figured on the basis of a 40-year life, 2½ per cent straight line a year, at the end of 40 years, if that building were still in use by the stockyards, and no immediate prospect of its being retired, how would you handle your depreciation reserve from that time on?

A. You are asking me a question of accounting, Judge. I would start out by saying that
1120 I would observe the condition of that property

Trans.

and its accrued depreciation as I found it at the time, and then if I was requested by my client as to how many years' life in the future over which the value I had assigned to the building should be written off, then I would render that conclusion and opinion, which would be somewhat different than what you have stated.

Q. Yes, sir.

A. In other words, I wouldn't expect my figures to develop and tie in with the reserve which had been accumulated for the retirement.

Q. But let me put it this way: based upon the stockyard records, the date of the construction of the building, in three years from now the depreciation reserve on the straight line will equal what you call the cost of that building, will it not?

2072 A. Yes, that would be correct.

Q. Now assume at the end of three years you inspect that building and you say that, "in my opinion it has a 20-year life remaining to it," in your judgment should the value of the building based on 30 years' remaining life be set up as a part of the assets of the stockyards and a depreciation reserve fund be set up for that building?

A. In that particular building—

MR. BOSWORTH: Just a minute, Mr. Examiner, it seems to me this line of questioning is immaterial, irrelevant, and incompetent for the reason that it is definitely opposed to the established principle of reconstruction new theory. This depreciation of which Judge Miles is speaking, based on 37 years' life, and so forth, as his questions indi- 1121

Trans.

cate, is based upon cost. Unless he had the premise that the costs at the time of construction 37 years ago are equal to present costs of reconstruction, there is no basis at all for these questions, because suppose your unit value, what I am getting at, had increased, we will say, 100 per cent, in other words, it cost twice as much for lumber, it cost twice as much for labor, it cost twice as much for brick, and so forth, as it did 37 years ago, the fact that you have been depreciating that building upon cost would, on the basis of reconstruction new, leave that building 50 per cent at least out of the way so far as any reserve is concerned. Now, therefore, unless there is a similarity in price structure and original cost with your reconstruction costs, these questions are certainly, it seems to me, immaterial and irrelevant.

MR. MILES: No argument. Take the ruling, then.

THE EXAMINER: Objection overruled.

(Witness continuing). Yes, sir, the building should be set up as an asset and a depreciation reserve established for the building. I believe that I know what you wish by your question and I think I can answer it a little more clearly by using this particular example.

I show for this building a weighted rate of 30 per cent based upon the observed condition of that structure, in my opinion, as compared to a new structure. I would anticipate in a structure of that kind which is becoming to a certain degree obsolete and has been somewhat in that category for some years, I would anticipate and would so recommend to the Stock Yard Company that they
2074 should have at this time accumulated a much higher reserve for the retirement of this structure than
1122 I find by deducting the accrued depreciation es-

Trans.

tablished by the observed condition. In other words, it might be quite possible in the next ten years that this building would have to be retired. It might be made to last another 30 years if maintenance and replacements and parts and all were put into the property, but strictly from an engineering viewpoint, and as a recommendation in an item of that kind, I would expect to have a much higher depreciation reserve to take care of its probable retirement in advance of many other items that might be no better so far as the condition per cent was concerned.

I would say that it is quite possible that there are several items theoretically that have gone beyond the life which would be established. That, however, would not be true literally because you then have to state to what extent replacements have been made throughout the life and when and to what degree that extended the life of the property.

2076 In evaluating such property under those circumstances I would set up the cost of reproduction less the cost of depreciation just as I found it to exist regardless of what might have been accumulated for its retirement.

I would recommend a depreciation reserve be established in line with my previous exhibits in that particular phase just in accordance with the properties as they now exist, under the assumption that they would at least last through to the proportionate part of the total life that could still be carried out by the property as it now exists. In other words, I would not admit that the life has expired. I do not think that the life has expired. If you renew parts of a property and continue to do so, you can make the life go on for 100 or 200 years. Hence in making the statement I

Trans.

just made, I assume that there were such replacements and repairs, with this exception: on some properties, such as frame buildings where a life of 20 to 25 years has been given in my studies for the annual depreciation amount, it is possible that very little change has been made but that the expected retirement of that property might not have occurred as soon as would normally be anticipated; in my opinion, Judge, the amount to be taken in annual depreciation is looked upon from the view-
2077 point of the present moment as you gaze ahead. Now, obviously, there have to be factors of safety involved in that computation. It is true that from an engineering standpoint, 10 or 15 years later you might find that through different changes in the property, through rehabilitation or various things, that your life has been definitely extended, even though you haven't put it back in dollars, but nevertheless as a factor of safety the provision should be made in order to retire that property over what you estimate to be its normal useful life.

2078 If you start out with a very simple piece of property and taking strictly that one item of property, you reach a point where the depreciation reserve equals the cost of reproduction new of that specific item of property (I say cost of reproduction new because I believe in the accumulation of reserve for replacement rather than for retirement), when you have reached that figure I would not, of course, recommend any longer accumulating a depreciation reserve against that property, but where you have a complex property and where it all goes in the same hat, so to speak, then of course the retirements are made both before and after the time when it was originally established the properties would be retired, and over a long period of time they usually cancel one another out.

Trans.

It is true that if a building today is constructed
of stone or concrete, and in the natural course of
events would have a 30-year life, and if because of
unusual conditions it is torn down at the end of
ten years, the fact that it is destroyed at the end of
ten years has its influence in the preparation of
life tables throughout the country. However, I
wouldn't subscribe to life tables and I find in
most instances that these tables are built up from
the experiences of particular classes of industry.
The attempt is made undoubtedly to recognize any
factor that would tend to retire that type of in-
dustry. But when we say that an ordinary good
structure has a life or expected life normally of
2079 40 years, we are taking into account the ordinary
factors that occur that might retire the property
as an average condition. Largely I take account
of the physical nature of the structure, the way
in which the materials are put together, the tying
2080 in of the structural elements with the equipment
elements and we ultimately reach a point that if
we maintain a property in 100 per cent condition,
at the end of 40 years the probability is that we
would have expended the full amount of the first
investment in maintaining it in such condition.
These expenditures would not be in the nature of
repairs but rather in the nature of replacements
periodically throughout the life of the building.

2081 Leaving this subject for a moment and refer-
ring to my Exhibit 38, I made the statement that
if I did not include the movable equipment, the
condition per cent would be increased; that is, the
way I put it the accrued depreciation would be de-
creased and would amount to 10.7 per cent rather
than 11.1 per cent. As an example of what I in-
cluded in movable equipment, I might say that in
the case of cattle pens the only thing included as
movable equipment is the fire protection equipment.

Trans.

I have not prepared any exhibit that would show all that I have included as movable equipment.

It is true that I have inspected the property of The Denver Union Stock Yard Company over a period of years beginning somewheres around 1920. I have in the past furnished the Stock Yard Company with some opinions as to the percentage applicable to the various assets for depreciation use.

No, I did not advise the company to increase the depreciation rate on the sheep barn from 1% to 2%. As a matter of fact, I understand that the Stock Yard Company is still depreciating the sheep barn on the basis of 2 per cent per annum, which would seem to indicate a 50-year life, while originally it was on the basis of a hundred year life, but I had no knowledge of that.

I have no specific knowledge of why the Company changed from a 50-year life on the scales to a 33-year life. Referring now to the watering troughs on my Exhibit 41, sheet 2 thereof, I set up the water troughs on the basis of $22,000 plus, with a life of fifteen years. Some of the watering troughs are concrete and some are corrugated iron.
2084 In order to reach this 15-year life period, I took a composite on the basis that there is practically an even division at the present moment between the concrete watering troughs and the metal troughs, for example, the record shows a cost of reproduction of $10,099 approximately for the concrete troughs as compared with about $11,900, or $12,000 for the metal troughs. I have adopted a life which would be the mean. Had they been all concrete or all metal, I probably would have used a different life.

1126 Referring back to depreciation reserves again, I do not agree that if the sinking fund method is

Trans.

used and that fund is kept intact and earns the actual rate of interest that it is supposed to, that it will replace the property at the end of the life period; that is, I do not subscribe to that statement unless you are taking a single item of property. I do not believe that the sinking fund so operates on a complex property. In a complex property your estimated life, as we have previously stated, might be in error. We might have esti-
2085 mated it a little too long a period, or a little too short a period, or for some other reason retirements might have been made in advance of the actual theoretical estimate which you had made, so even assuming that your estimate was absolutely correct for the date at which it had been made as to the life, then, whatever outside influence or some outside influence which cannot be foreseen might necessitate the removal of the certain item of property in advance of the end of its life. If the moneys were removed from the fund in order to make your replacements, then, the fund automatically falls down and the additional accruals in later period are not sufficient to make it up. In other words, you would have to have overage sufficiently greater to offset much earlier retirement of the property.

Sinking Fund method fails unless applied to single item.

Q. Then, let me ask you this, if the straight line be used and if the company does invest that at any rate of interest, and it is kept intact, then, the company will have even in a complex property a sum greater than is necessary to take care of the original investment, would it not?

MR. BOSWORTH: That raises, as a matter of fact, and calls for a conclusion of law of this witness. We are entitled to that money, Mr. Examin-
2086 er, those earnings, as much as we are entitled to

Trans.

earnings derived from yardage, from private investment of surplus, or any thing else, then, as a matter of law the question comes up as to whether that is in excess of the amount in the depreciation reserve, or what is the amount necessary to repay the capital, that is why I said this calls for a conclusion of this witness, that is a law point and nothing else but a law point.

2087 THE EXAMINER: Well, never mind what the law is on the proposition, you tell us what you arrived at from the standpoint of an expert on the question put to you and let Mr. Miles and Mr. Bosworth then argue about the law after you give your statement of facts.

(Witness continuing). I would say taking first the statement and then answering your specific statement, that in my opinion, the value of the asset, plus the amount in the reserve should be at least the total investment originally put into the property, and I am assuming by investment the cost of reproduction new in order to avoid the price changes. In other words, this fund that was available, which would include the moneys that the fund might earn would have to be at all times at least equivalent to the amount of depreciation on the property. Otherwise it would fall down, and that it is not in any way taking into account the point in my opinion as to whether or not the company is entitled to expend such earnings on that fund as they see fit. I would expect in any event, regardless of where the money came from that the property should be fully protected in accordance with an accumulation on the straight line basis. Thus if we assume that you have a property life of say ten years on the straight line, you will set aside 10 per cent a year, and at the end of ten years, if that fund has been left intact, you will

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have 100 per cent. Now, if we assume that at some time, the first or second year you invested that, that you got some rate of interest, perhaps 1 per cent, perhaps 5 per cent, at the end of ten years you would have the entire 100 per cent plus a certain amount that you had earned as interest.

MR. BOSWORTH: Mr. Examiner, let the record show that I am objecting to this entire line of testimony upon the same ground, namely that it is incompetent, irrevelant and immaterial as to whether we make any earnings upon the depreciation reserve or not. That gives the Government or the rate payer right to insist that the earnings shall be spent in any particular way or devoted to any particular purpose and for that reason I insist that it is incompetent, irrelevant and immaterial.

2089 THE EXAMINER: Objection overruled until further notice on that point.

(Witness continuing). In my opinion this extra amount could be used for any purpose that the owners saw fit.

Q. Yes, sir, and if it could be so used, then, the yards has earned more than the Secretary has found to be a fair rate of return on it, assuming that first point, more than a fair rate of return, then, that interest, to this extent, they have earned more than a fair rate of return, have they not?

A. Again taking your assumption without regard to whether I might agree with that assumption.

Q. Surely.

A. I would say that they still had not, for the very reason I gave in discussing Mr. Bufkin's Government Exhibit 41, page 20, that the 1129

Trans.

only way I can answer that question yes, which would be my honest opinion would be that the fair return would have to be computed upon the cost of reproduction new, that is the first investment for each of the years throughout the life, and in that condition, then, of course, you would be duplicating if you added this into that straight line depreciation fund. Now, then, that explains my theory that is consistent with my thinking on this subject for a great number of years; I have constantly studied this and I feel now and have felt for many years that the approach to this whole question is somewhat unsound. I have already
2090 testified that I do not believe the observed condition to be the proper method of establishing value for rate making purposes. On the other hand, if you are going to use a sinking fund method of depreciation or we are going to put into the reserve a portion of the earnings from the straight line depreciation which I think belongs to the company because it has properly used it in service, if that is used, why, then, it is the company's money. Now, if we are going to say that that must be taken into the fund, then, in turn we must give the company the return on every dollar from the year it started until the year it ends. If you do not it is inevitable confiscation. You cannot have it both ways. Is must be one way or the other. If we are going to take a life basis of depreciation and bring the property down upon which reduced basis the fair rate of return would be computed, then, we have to get a straight line on that for our reserve.

(Witness continuing). I think if you have a record of the actual experience that you know to

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be sound, and it can be supported, certainly that is the historical fact that should be given some consideration. You have too, of course, determined
2091 that you are talking about a property now that is undoubtedly changing materially from when the actual figures were compiled. You have to also remember that there are changes in the price levels, changes of conditions and other factors, so that the mere historical results of the operations of the company are only to be given consideration and very likely many times they will have little weight and again may have considerable weight. It depends upon the nature of the property and the life of the property and the accuracy of the figures available.

2092 Q. Let me see if I can put it this way: assume that you will give a life to the pens here of 20 years, then, that is five per cent of a year straight line?

A. Yes, sir.

Q. Supposing that at the end of ten years you find that from the depreciation reserve the company has not taken 50 per cent, but has expended only 10 per cent, or at the end of the 20-year life the pens are still going and it has used only, we will say, 20 per cent of the depreciation reserve, would you consider that fact and those circumstances?

A. As a matter of fact, I did find that particular situation and I have considered that fact. In other words, that is the reason for my recommendation of the fair and reasonable annual depreciation rates and charges, just because the nature of the stockyards business not only at Denver but practically at every other market that I have investigated is such as to require the expenditure continually on

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matters of repair and maintenence, and over a long period of time these automatically form major replacements, if you wish. Now, every time a board is put on the fence, it may be treated as a maintenance expense, but after all as an entirety, all such boards become a definite replacement of the pen, so that over a certain length of time, of course, the repair and maintenance account will maintain the property, will replace the property. I believe that the records of actual inspection, or if they are recorded, as far as that is concerned, and you have ways and means of checking the manner in which they were recorded and what they reflect and to what property they apply should be considered. The great difficulty is that it always relates to a property that may be basically changed from the dates on which the records were compiled. For example, a stockyards property, take the Denver property, has grown materially since 1915. It is an entirely different physical property. What might have been necessary to keep this property in good condition at that time would be entirely different under conditions of 1934, both for the size of the property, its character and the price levels at which labor and materials would have to be purchased to do this.

If my estimate of the future as to the condition that will prevail coincided with the conditions under which these facts had been determined or it were possible for me to form my judgment as to the change, then, of course, I would give very definite consideration to that. In other words, the actual operation of property,
2094 or property in operation under known conditions, if you can relate these conditions, they are a material help to you in estimating the

Trans.

> lives and possible expectancy of lives of the assets as you find them, and that I have definitely endeavored to do in this particular study in arriving at the expected life of the various classes of assets.

I have established what I believe to be the necessary amount to the reserve with the expectancy of the continuity of the enterprise indefinitely in the future. I have also stated in my direct testimony that in my opinion, and under the usual business conditions, I would recommend that a reserve be maintained or be accumulated for the ultimate return of capital from any cause such as the possible going out of business entirely, but that in this particular proceedings where I know that the effort is to fix a reasonable amount to be used in a rate analysis, then, I think it would not be proper to estimate or to predict that the stockyards company in Denver is going out of business and accumulate a reserve for that purpose; therefore, in my estimates I have eliminated that factor from consideration.

It is my personal conception of rate making that the rate payer should pay for the cost of all service rendered to him, plus the reasonable profit or return on the investment in property. Now, other costs, as I see it, would be the amount of property that is being used up in rendering that service. If a property had a life of ten years definitely, then it seems to me that the rate payer should pay one-tenth in his rates each year for the amount of property consumed in rendering him that service, just exactly the same in the case of the stockyards as the hay that the animals that he ships to the market may consume. I see no difference in theory or principle between the consumption of hay and the consumption of some por- 1133

tion of the pens in which the stock is yarded. Now, if the service is being rendered under a limited period of years, or a period of 20 years, obviously that is being consumed by the shipper in the service that is being rendered because it could only last the 20 years; therefore, I think it should be established and placed in the rates under that assumption.

Per Cent condition based on judgment.

2098 On my direct examination I testified that Mr. Zelinski's condition per cent was too low, though it is true that that condition per cent is a judgment which Mr. Zelinski arrived at after study, and it is also true that my condition per cent is based on my judgment.

Long knowledge assists this judgment.

I don't think it is possible to mathematically determine condition per cent to a dead certainty. I think it is possible, by perhaps a longer familiarity with the property, to form, perhaps, a more detailed judgment and study of the conditions that exist.

2099 In the 1930 hearing I went on the basis of deducting the actual depreciation that I felt affected the capability of the property to render service as compared to new property. I didn't use that method in this hearing.

It is my view that Mr. Bufkin basically presented the sinking fund, or so-called sinking fund method of establishing the amounts predicated on Mr. Zelinski's engineering findings, from which I understand that he actually made a further deduction which of course restricted the amount that the stockyards company would have for that purpose still more than would have been shown in the sinking fund itself.

I would say that the method I have submitted is the straight line method modified to recognize

Trans.

the actual conditions of this particular property and the method by which the costs of property
2100 maintenance and replacement would be carried out in actual practices. It is, however, fundamentally the straight line method. The use of that method is my choice based upon a long study of stockyard operations.

Value of the Market.

I heard Mr. Pexton's testimony relating to certain land donations, etc. and that they build up what he calls the value of the market. It is not my thought that my figure of what we may call going concern value if adopted should be added to the figures testified to by Mr. Pexton. That is not my thought because I have approached it from an entirely different angle. I have looked at it from the standpoint of the situation as I see it at the date of this inquiry; that is, at the end of 1934 or of as approximately the present date. Mr. Pexton's tabulation has to do with the historical records of investment upon the part of the stockyards company in certain assets, which of course I have given consideration in arriving at my figure. However, it is not predicated directly on Mr. Pexton's showing in that regard.

2101 I testified yesterday that I appeared as a witness for the Pullman Company in building up going concern value. That case went on the Interstate Commerce Commission docket. I do not recall the docket number; to the best of my recollection the case was heard some time in 1927 or early in 1928. In a broad way I think it has been decided by the Commission, although there are still some phases that are still probably under consideration. My position on going concern value was rejected by the Commission in common with all other decisions of a similar nature which the Commission has made.

Trans.

2102 In that case the intangible values as a whole were established by me. Some phases of the intangible values were presented by executives or others of the Pullman Company where the matters involved related to their previous operation. Some phases I presented. But the entire claim was developed by me or directly under my supervision. However, as I previously stated they rejected all values as far as intangible property was concerned.

Hazards of this Industry.

Now with respect to the hazards that I think are found in the stockyards industry. It would be my opinion, to start with, perhaps the major hazard in the stockyards industry is the competitive conditions found in the character of the industry. I would say that was the greatest hazard to be faced. There are following that many smaller or individual hazards in connection with the handling of livestock, or the making of such livestock available for market. There are the local hazards involved in climatic conditions, drouth, the many factors that might have an influence on the volume of business that might be anticipated at the individual markets. That does not entirely finish the list, but most of the hazards that I would express would be somewhat similar to the ones I have now stated. Some of the hazards may be insured against to a degree, it is true, but of course you would not insure against the value of livestock that would be received.

I regard the climatic conditions as a hazard primarily because of drouth which might affect the health of the livestock on the range, which in turn would have a material bearing on the receipts at the yard.

Established records are an element of going value.

Yesterday among the elements of going concern value I mentioned what might be called records
2104 that the Stock Yard Company has built up. I

Trans.

would think that some of the records or some of the basis for establishing the records might be secured from Government sources. It would be my opinion, however, that if a new stockyards were to be undertaken at a new location that appeared to offer potentialities to make the investment worth while, that the logical and proper step would be to consult with the various stockyards now in operation and from them determine what might be a background for a setup of records and systems at the new market. However, that doesn't in any way state that the information assembled by the Government might not be of some advantage. However, it is true that such records could be secured with very little time, trouble and expense. Nevertheless I think that item does enter into going concern value. It would be difficult to state to what extent.

Mr. Pexton's figures show roughly $325,000 of
2106 expenditures. I gave those expenditures just the same weight as I did the evidence of similar expenditures at all of the other stockyards markets that I have found, through my experience in the past. In other words, I did not give any more weight to that than I did to the general condition that I have found that such expenditures had been made by all of the stockyards markets. In my approach to this question I necessarily took into account the development of the market and the cost so expended upon the part of the Stockyards Company more to convince myself that the elements which I found to exist at this market and believe to exist today had not been a gift upon the part of the users of the service but had actually been paid for by the capital invested in the stockyards enterprise. The purpose of the investment, in my opinion, in a fundamental way, was to build up the market, which, in turn, of course, would react to

Trans.

the benefit of the Stock Yard Company in increas-
ing their business. By building up the market,
I mean building up the buying power which in turn
would bring more livestock into the market. We
thought those expenditures were to the advantage
of both the stockyards and the shipper to the mar-
ket. Had those expenditures not been made it is
a little difficult to state what would be the situa-
tion at the stockyards today.

2107 I heard Mr. Pexton's testimony, which was rath-
er interesting to me having been a resident of Den-
ver for many years, in connection with the possi-
bility of a market at Pueblo or at Cheyenne, both
of these points being on the main line and having
probably an equal opportunity, or, perhaps, in some
respects, better opportunity to have developed a
substantial market. By virtue of the effort and
expenditures on the part of the Stock Yard Com-
pany the market was actually established at Den-
ver. I can only state that had these expenditures
not been made I could not conceive that the stock-
yards properties would be as large or expensive as
they are today, in which case they would be only
large enough to handle the volume of business
that would be now available, and, of course, in that
case they would not be worth today's value be-
2108 cause there would not be as much property. In
a broad way it is my opinion that there would be
no salvage value to the stockyards. There would
be some; there would also be some expense, I be-
lieve excess expense in which you would actually
pay to have some of the property removed. As I
understand Mr. Zelinski's appraisal and testimony
it included what is known as construction over-
head or those costs that are incurred in the pro-
cess of reproduction of the property, but it does
not include intangible property. By intangible
1138 property I have in mind all factors existing and

Trans.

possessed by The Denver Union Stock Yard Company other than the land and physical structural improvements thereof. I would not care to state that going value is one of the major items. I would think that a number of the values and elements of value existing at the market would be embraced in the general item of going value.

I am aware that in Mr. Zelinski's appraisal he considered the material as being new and considered the cost of labor in putting it in place.

In my opinion, $350,000 is a minimum figure that would have to be allowed and added to the value of the land structural improvements and
2109 working capital, in order to arrive at a reasonable and fair value of this property for rate making purposes. That opinion was supported by the figure of $10.00 per car for a 35,000 car business.

If it were my judgment that only 10,000 cars a year would be received, it would affect the going value very materially, for the reason that the capacity of this property, that is the size and extent of the facilities would be substantially in excess of what I found to be a reasonable relationship in other stockyard investments for which reason I would feel that the investment was beyond the needs and very likely the total would have been reduced materially, and had it been in my opinion that 10,000 cars would be the basis I would not
2110 multiply that 10,000 cars by $10.00. Taking
to all of the other property exactly as it is, I would
2111 not feel that the property would justify an investment up to the physical value as determined.

The question of how much I would cut down my going value on the basis of receiving only 10,000 cars is, of course, a hypothetical question that would be almost impossible to answer. It would, as I say, and I am perfectly willing to admit, have a

Trans.

result very likely of eliminating any additional figure as applied to the physical property, that is over and above the physical property. However, it might be possible that there would still be elements of going value and that in turn would have to be considered on the basis of a much smaller investment essential to handle that amount of livestock. There, of course, is another factor in there that must receive serious consideration and that is the changes or lack of uniformity perhaps in the receipts of livestock not only during the varying months of the year, but during the different years because of other conditions which in turn is another reason for the hazards which I have previously mentioned. In other words, an absolutely uniform volume of business, a 35,000 car per annum coming in regularly would enable the Stock Yard Company perhaps to handle the total volume for any one year with less facilities. Those, of course, are all speculations. I have taken the conditions as I found them, and in my opinion, even though there
2112 may be an upward or downward swing, the records of livestock receipts during at least the last 15 years would seem to indicate approximately a 35,000 car volume. Now, a $10 per car might be varied, depending entirely on the nature of the stockyards business that you were appraising just as it is in any other type of industry. My assumption and my figures must, in the final analysis, depend upon the shippers continuing to ship to this market. In other words, my judgment, and my opinion is taken from my long familiarity with the Denver market, the study of the conditions as they here exist, a study of the statistics of receipts, and, of course, the studies I have made of other markets to make comparisons with the conditions at this market.

Trans.

Among the factors I mentioned yesterday as contributing to the going concern value is the fact that there is an established organization of personnel. If we assume for the moment that both Mr. Shoemaker and Mr. Pexton should leave the employ of the yards, it would affect my opinion in certain respects for at least a temporary length of time. In other words, if capital should be interested in acquiring the stockyards property and should come to me for an opinion as to what they might afford to pay for it, I would state that to some extent at least during probably some years
2113 in the future they would be much better served by retaining the present management than by attempting to get a new management. However, ultimately over a period of time we know that it is possible to replace management who might have some different ideas, as a whole and would gradually work out and we will have the problems that have already been solved by the present management.
2114 I would say that the management factor is of great importance, more perhaps in what they have been able to bring about in the past than from entirely a future condition. Unquestionably, the management of any industry has material value for it until such time, at least, in the future as it could be replaced by equally competent management. To that extent a higher price would be justified if the management came over at the purchase than would otherwise be the case.

It is true that if I had taken the actual receipts of livestock each year from 1930 up to 1935, I would have found varying figures. From my experience with the yards during the past 15 years, I would be inclined to think, if we could exclude extraneous economic conditions, which is quite difficult, that the basis, that is the volume of business would not have materially changed in so far as the future

outlook is concerned for a number of years. Now, it is true that the immediate outlook is not particularly favorable, as Mr. Pexton has testified, and as I found to be true at other markets. It is also true, at least from the studies that I have made of the receipts, that the growth has been slow and I might almost say stable for perhaps 15 years insofar as the total volume of receipts is concerned,
2115 but the growth has been very material in the internal handling of the business, in other words, the facilities, the character of the facilities necessary in the handling of the business of the type that it is at the present time has shown a very substantial growth and change over this 15 years, even though their volume has been relatively constant. Now, to that extent, if we go back several years, say, to the earlier years of the 20's, then, perhaps, I would not have found as high value, even though the volume was the same, but going as far as 1930, I would not anticipate a great deal of difference in the figures. The reason that I take as my basic figure $10 per car instead of say $8 or $12 is based primarily from my judgment after studying all of the markets for so many years, the character, nature of the business, the relation of the investment per car of livestock received at the various markets, the sources and volume of that business, that is, the nature or character of it as compared to these different markets, and finally my best judgment as to the reasonable price that might be paid as a minimum for that volume of business which represents the elements that I considered to be going value.

Reason for figure of $10. per car.

Yesterday I mentioned in passing the estimates of commission men as to recapturing business if it were lost, for a period of five years' time. How-
2116 ever, I gave no weight to that and I think I stated simply in passing, as you may say, that in the

Trans.

1930 hearing I made some estimates strictly upon the cost of reproduction new under the assumption that the stockyards facilities, that is, the improvements were removed entirely from the site, but that everything else remained, including the packing houses and the roads and the general improvements, that it would require a certain length of time to reproduce these facilities. During that time, of course, the market would not be available. Testimony was introduced in the 1930 hearing by commission men and others based upon their experience in going out into the field and getting business as to how long it would take to bring back the livestock receipts up to the point that they were in 1930. As I recall, it was approximately five years.

Now, strictly in answer to your question, the figures that I stated in my direct examination represented simply the carrying charges that might be incurred on the physical property investments, if it took that length of time to bring the business back. It did not enter into my computation or my opinion in any way in the present case.

2117 Whereupon Respondent's Exhibits 38, 39, 40, 41 and 42 were offered and received in evidence subject to the Government's reservation that it be not bound by what the figures in said exhibits showed. **Respondent's Exhibits 38-42 admitted.**

2118 ARTHUR H. BOSWORTH, a witness called by the respondent after being sworn, testified as follows:

My name is Arthur H. Bosworth. I reside in Denver, Colorado; I am a dealer in investment securities. I am president of Bosworth, Chanute, Loughridge & Company, with offices on the ground floor of the Securities Building.

Trans.

I was employed by William E. Sweet and Company about July 1, 1908, and that firm was merged with another, forming Sweet, Causey and Foster Company in 1914. I was an official and director of William E. Sweet & Company and after the merger I became vice-president and director of Sweet, Causey, Foster & Company. I remained with the latter firm until the fall of 1916 when I left with Mr. Chanute and Mr. Loughridge to establish our own company,—Bosworth, Chanute and Company. Later the name was changed to our present name, Bosworth, Chanute, Loughridge
2119 and Company. As to the type of business, William E. Sweet and company was chiefly a municipal house, but after the merger, Sweet, Causey, Foster and Company, while still active in Municipals, were particularly interested in dealing in and originating corporation issues. Bosworth, Chanute, Loughridge and Company has always been active in municipal bonds, but they have been even more active in dealing in corporation bonds. This firm participates in underwritings and distributing groups, and also originates many industrial issues.

New issues, as everyone knows, until this year, have been exceedingly rare since 1929. The capital issues market was frozen tight, first, by economic conditions from 1930 to 1932 and then by the securities legislation which became laws in 1933 and 1934. It is only recently that the capital issues markets have begun to thaw out. Going back some years, among the issues in which we were either the sole originators, or one of the principal originators, I might mention those of the following companies:

B. J. Johnson Soap Company (now Colgate-Palmolive Peet Company)

Denver Fire Clay Company

Trans.

Irving Pitt Company
Sheffield Steel Company
Denver Rock Drill Company (now Gardner-Denver Co.)
Daniels & Fisher Stores Company
Denver Union Stock Yard Company
2120 General Stockyards Corporation
Driver Harris Company.

Some of these issues are bonds, some preferred stock and some common stock. Of course, there are many more which could be listed.

In my 27 years of experience I have had many occasions to investigate many concerns with a view to possible financing not only in this immediate locality but elsewhere, in fact, in many parts of the United States; and in those investigations I have called upon, or rather, it has been my practice to consider and pass upon the soundness of these companies, their financial structure and the rate which we felt was necessary that they should return in order to attract capital to them.

In 1925 our attention was called to the fact that under the Consent Decree entered by the Federal Court, as the culmination of the Government's case against the packers, Swift & Company and Armour & Company, who at that time owned The Denver Union Stock Yard Company, were obliged to sell their stockyards holdings. Our firm had financed the Blayney-Murphy Company, an independent meat packer located at the Denver Yards, and as a result we had gotten well acquainted with a number of people out at the stockyards. We believed that The Denver Union Stock Yard Company was a very valuable property and we thought it would be not
2121 only a profitable piece of business to us, but a very constructive happening for all concerned, if we could bring the ownership of the Yards to Colo-

Trans.

rado investors. We consulted principally with Mr. Joseph A. Shoemaker, and with Mr. Joseph P. Murphy, and with a number of others, and we negotiated with Armour & Company and Swift & Company. After lengthy negotiations, in 1926 we were successful in purchasing from them the entire common stock issue of The Denver Union Stock Yard Company. Shortly after the purchase was made we successfully distributed the securities of the company, that is, preferred and common stock, to the public.

At the time we completed the purchase from the Chicago packers, I asked Armour & Company if they would give me the opportunity of considering the purchase of any other stockyards which, under the law, they were required to sell. Our negotiations had apparently been satisfactory to both sides, and they said there probably would be more business of that kind and they would bear me in mind. Mr. Ellis, vice-president of Armour & Company, told me that they would probably consider the sale of the Fort Worth Stockyards in the near future. He mentioned that they were having appraisals made and were bringing audits up to date, and so forth. I asked Mr. Shoemaker as a favor to me if he would accompany me to Fort Worth, which he did, and we studied the yards from the standpoint of a possible purchase by my firm. Meanwhile, Messrs. Stone & Webster and Blodget had noticed our Denver purchase and they approached Armour & Company to see if they might have something to sell. Our firm had enjoyed a great deal of business with Stone & Webster and Blodget and when they learned that we were actively working on the Fort Worth Stockyards, we formed a joint account and negotiated with Armour & Company together. These negotiations were practically

1146 closed, all the terms having been agreed to and

Trans.
2122 lawyers summoned from Denver and New York
to draw up contracts with the attorneys of the sell-
ers, when one of the parties interested, suddenly
changed his mind and refused to sell. We, Stone
& Webster and Blodget and our company, then sug-
gested to Armour and Company that we organize
a company, which would be an investment com-
pany in stockyards securities and that this com-
pany purchase all the stockyards investments of
Armour & Company. After protracted negotiations
this was done late in 1927 or early in 1928, and
the General Stockyards Corporation was formed.
The preferred and common stock issues of this com-
pany were sold to the public by Stone & Webster
and Blodget and ourselves. Because General Stock-
yards owns a substantial interest in the common
stock of the yards at Fort Worth, Sioux City, St.
Paul and St. Louis, I have kept in rather close
touch with the developments from time to time in
these markets. About a year later we secured an
option to purchase a substantial block of the Un-
ion Stockyards Company of Omaha, and after go-
ing over financial statements, and so forth, I went
to Omaha to size up that situation. Owing to
existing market conditions at about the time our
option expired, we decided not to exercise the
option.

I am a member of the Board of Directors of the
General Stockyards Corporation and of The Denver
Union Stock Yard Company. When ownership of
The Denver Union Stock Yard Company was trans-
2123 ferred to Denver and vicinity, Mr. Shoemaker felt
it would be very desirable to have a Board of Di-
rectors composed of people who had a real in-
terest in the company, either from a financial
standpoint, or from the fact that they were ac-
tively interested in the business of the yards.
Therefore, it was decided to invite as directors

Trans.

several men who are livestock producers in this territory, the managers of the principal packing plants at the yards, representatives of the commission men, in addition to having representatives of the stockholders.

The Board of Directors is as follows:

Joseph A. Shoemaker, president of the company.
Edward Sargent, of Chama, New Mexico.
Murdo Mackenzie, of Denver, Colorado.
William C. Harris, of Sterling, Colorado
Harry W. Farr, of Greeley, Colorado.
Nate Warren, of Fort Collins, Colorado.

These last five men mentioned are actively engaged in raising either cattle or sheep and are among the most prominent livestock producers in the territory served by The Denver Union Stock Yard Company. Mr. Ben Kemper, who is president of the Denver Livestock Commission Company, and Charles G. Smith, manager of John Clay and Company, are the commission men on the Board. S. A. Middaugh of Swift & Company,
2124 and James P. Murphy, formerly of the Blayney-Murphy Company, are the packers on the Board. Mr. Robert Bosworth, the Company's attorney, is a director. Philip K. Alexander, vice-president of the First National Bank of Denver, Paul Loughridge and I represent many stockholders—some large holders, and some small ones.

The market for stockyards securities is rather inactive and I would not want to give the impression that we have a great many dealings in them every week or every month, because sometimes the dealings are rather infrequent. I have talked to Babcock-Richton Company, and Swift, Langill and Henke, both of Chicago, and I find they have had the same experience. These are firms which are

Trans.

more active than any other firms in Chicago in the stockyards securities. Oftentimes, when stock is offered for sale, it is necessary to search for a buyer.

2125 Based upon my experience I have formed an opinion as to the rate of return that stockyards companies in general, and The Denver Union Stock Yard Company in particular, should be permitted to earn in order to function properly and to be attractive to capital. I have prepared a statement setting out my views, which is as follows:

Rate of return must be adequate to attract capital.

Unless any well regulated business is permitted to earn a satisfactory return on the capital invested in it, that capital will be drawn away from the industry and the industry will be unable to render satisfactory service to the public. If the opportunity for profitable investment is taken from any field, capital will cease to flow in that direction. The stockyard industry is no exception to this rule. Moreover, many millions of dollars, during the past fifty years, have been invested in stockyards properties, and this capital is entitled to reasonable protection. The protection results from establishing a fair valuation on the property and then by fixing a fair rate of return on that valuation. Therefore, I consider that this question of what is a fair rate of return, is one of the most vital points at issue in this hearing.

If it were possible to point out another business which would be really comparable to the stockyards business, and upon which the courts had fixed a definite rate of return, it would be an easier matter to fix upon a proper return for a stockyard property. After careful study, I know of no line of business which is closely comparable
2126 to the stockyards business. Sometimes there is a disposition to compare stockyards companies to

railroad or public utility companies, serving the public with gas, electricity or transportation, but a careful comparison in every case will disclose such great differences that, in my opinion, there is little value in such comparison. For various reasons this is true of comparisons with companies whose business it is to manufacture and sell ice, or who are in the business of distributing natural gas. Therefore, I have come to the conclusion that one must study the stockyards business—the property; the earnings throughout the period of years; the yield of stockyards securities during this period, etc., in order to reach a conclusion as to what is a reasonable rate of return.

Government Exhibit 45 criticized.

I have carefully read Dr. Dozier's testimony in this hearing on the rate of return, and I have also carefully gone over his list of securities contained in Government Exhibit 45. I do not think the securities listed in this exhibit are comparable to securities of the various stockyards who have securities outstanding with the public.

Companies listed are not comparable.

In the first place, all of these securities are issued by very large corporations. The assets in practically every case are many times those of The Denver Union Stock Yard Company. Second, the companies are nationally known, and in many instances internationally known, with thousands of security holders scattered all over the United States and in many foreign countries. Third, the line of business in which they are engaged is not comparable to the stockyards business. Fourth, practically
2127 all of the securities are listed on the leading stock exchanges of the country and they have a broad, active market. They are exceedingly liquid, whereas, the securities of The Denver Union Stock Yard Company are held locally for the most part, and are inactive. I do not think that whatever the

Trans.

yield is on these securities has the slightest bearing on the yield that the public would demand from securities of The Denver Union Stock Yard Company.

Stockyards do not buy and sell livestock

Many people believe that the stockyards companies buy and sell livestock. Probably everyone here knows this is not true. The stockyards companies do not deal in livestock, they merely provide a market place for livestock, where buyer and seller may meet. They also provide the facilities for care of the animals, and for the protection of all parties to the dealings that take place in the market. It has always seemed to me that a stockyards company is essentially like the New York Stock Exchange, or a Produce Exchange, except that the stockyards deal with a commodity which must be physically present for inspection when sold, because each unit of the commodity is, or may be,

The Stockyards is a market like N. Y. Stock Exchange.

2128 different. If you could picture the New York Stock Exchange with a safety deposit box for each owner's shares, and a requirement that every buyer, or his agent, could inspect the shares before buying, these safety deposit boxes would be tantamount to the pens in a stockyards, but that isn't necessary because every share of stock in a corporation is like every other share of stock in that corporation. The yardage charge of the stockyards is essentially a charge for the use of the market. Few people know what it means to build up a market,—years of work, great expense, and it is necessary for the management to be always on the alert, so that the facilities of the market are always adequate—not only physical properties, but the necessity of fostering the demand from livestock traders, livestock feeders, packers, etc.

Charge made is a marketing charge.

The stockyards business is essentially a "service" business, in contrast with a manufacturing or merchandising company. Because the stockyards busi-

Stockyards a service business.

Trans.

ness has practically no inventory (except a modest amount of feed and other supplies), and because most of the transactions are on a cash basis, certain hazards which inevitably accompany merchandising or manufacturing are absent in this case, but there are many other hazards in this business, and in discussing rate of return these hazards must be given consideration.

Hazards of the business should be considered in fixing rate of return.

In the first place I believe the theory of limiting electric light and power or other similar public utility concerns, to a fixed rate of return, is in large part due to the fact that such a utility exercises a governmental function, frequently this is under a franchise which is a truly monopolistic grant, and generally is accompanied by a truly sovereign grant of eminent domain. Where the Government elects to delegate the individuals the right and power to perform its duties (the performance of which if done by the Government would theoretically be on a non-profit basis, or if profit were made it would go to reduce taxes) the Government unquestionably has the right to say how much compensation the individual shall have, i. e., how much they shall be permitted to earn. In stockyards companies, as I see it, the situation is different; they do not exercise a governmental function, do not have the right of eminent domain, and they are certainly not a monopoly. The Denver Union Stock Yard Company is one of the most competitive markets in the country. It competes directly with stockyards companies in Ogden, Utah; Omaha, Nebraska; Kansas City, Missouri, and various other points for shipments to its market. It is necessary to employ solicitors, who travel throughout 8 or 10 western States, spreading the gospel of "Ship 'em to Denver." Nor is the competition limited to that of other stockyards. It is necessary to compete for shipments to the packers,

Stockyards exercise no governmental function.

No right of eminent domain.

Competitive nature of the business.

Trans.

auction yards, and with certain organizations of producers, who during recent years have more and more been inclined toward direct buying or marketing.

Weather Hazard.

One of the hazards of the business is weather. It is easy to appreciate this fact in the light of events during the past few weeks. Floods in the territory tributary to the Denver market have washed out many miles of railroads, with the result that thousands of livestock, unquestionably bound for this market, had to be diverted elsewhere. The great
2130 drouth of 1934 and the spring of 1935 resulted in the death of thousands of head of livestock in the intermountain and prairie states and competent authorities on live stock estimate that it will require several years to bring back the livestock population to the figures of 1933. To meet this emergency the Government carried out its huge cattle buying program in the second half of 1934. This greatly increased stockyards earnings in that year, but at terrific cost to the yards, if future years are taken into consideration. The serious decline in receipts, and earnings, for the first six months of 1935 is evidence of the truth of this statement. Abnormally cold weather during the winter months interfere with shipments and consequently adversely affect earnings. Operating expenses of the yards may be substantially increased by heavy rains or snows.

Freight rate hazard.

The business is frequently placed in jeopardy by changing freight rates. These rates may restrict the territory from which livestock is sent to the Denver market. The relationship between freight rates on the live animals and on finished meat products has a great influence on the receipts in Denver, and a variation in this relationship may affect earnings seriously.

Trans.

Hazard of price fluctuations.

The fluctuating prices of livestock are frequently responsible for a certain decline in the earnings of the stockyards companies. It has been the experience in Denver, that when prices are low there is a tendency to ship to more distant markets with the hope that prices will improve while the livestock is in transit. When livestock prices are low production is naturally restricted with the result that the stockyards suffer and it usually takes several years before receipts come back to normal.

2131 Another hazard is disease. Occasionally it is necessary for the Federal Government or the State Government to quarantine against various animal diseases and to prohibit shipments. Sometimes these quarantines last for several weeks and longer, and not only are the earnings lost during this period, but it takes a considerable time to persuade shippers that it is safe to send the livestock back to the market which has been quarantined. Due to the viligance and able management of The Denver Union Stock Yard Company, and also of the representatives of the Bureau of Animal Industry, there has not been an epidemic at the Denver stockyards for a number of years, but there is always a possibility of a quarantine. Capital is nervous, and this is a hazard which does have some effect on the rate of return investors demand from stockyards securities.

Disease hazard.

It is always easier to raise capital for an enterprise which bids fair to grow rapidly in size and importance. It is true, too, that investors prefer to place their money in common stocks of going businesses which are enjoying rapid growth in sales and earnings. Purchasers of common stocks almost universally buy stock not only on the strength of the current showing of earnings, but on prospects of earnings as well. Therefore, if there is

Trans.

reason to expect increased earnings they are willing to buy the stock on a lower yield basis than otherwise would be the case. Investors in bonds and preferred stocks, because all they can ever ex-
2132 pect to secure is the fixed rate of return, are more interested in stability of earnings and a sufficient margin above interest and dividends, so that the fixed rate of return will be paid continuously. The common stock purchaser, however, has a different view. If one studies earnings records of stockyards it is apparent that this is not a line of business where very rapid growth can be expected. The holder of common stocks of stockyards companies can rarely expect a stock dividend, or any great increase in cash dividends. Therefore, it is necessary for the common stock of stockyards companies to pay a much higher yield, if the investor's dollar is to be obtained.

It seems to me that the best measure of what the public will demand as a rate of return on a stockyard property is the composite rate of return at which the securities of stockyards have been selling in the past. This removes the discussion from the realm of theory to the more definite realm of experience. I am offering an exhibit which gives certain data relating to The Denver Union Stock Yard Company.

Whereupon the exhibit was marked Respondent's Exhibit 43.

Respondent's Exhibit 43 described.

2133 (Witness continuing). Respondent's Exhibit 43 shows, with respect to The Denver Union Stock Yard Company, the amount of bonds, preferred and common stock outstanding in the years 1930 to 1934, inclusive; the interest and dividends paid in those years; the market price of the securities and the yield of the bonds, preferred stock and common stock. It also shows the earnings per share of

Trans.

common stock; the percentage of these earnings to the market price (market as of Dec. 31st of each year) and the composite return by averaging the interest paid on the bonds, the dividends paid on the preferred stock, and the earnings per share on the common stock. This average is a weighted figure—the different amount of each class of security being taken into consideration. The reason that the earnings per share of common stock are used in this connection, instead of using the actual dividends paid per share of common stock, is that the common stockholder is more interested in what his stock earns than what is being paid in dividends.

I think we will all admit that the Government's cattle buying program in 1934 resulted in grossly abnormal business for that year. In fact, I have been shown figures by The Denver Union Stock Yard Company which state that of total receipts
2134 in 1934 on a car basis (including drive-ins), approximately 35% were Government receipts. It would probably present a fairer picture of the situation if 1934 were eliminated from Respondent's Exhibit 43. You will see from this exhibit that the average Composite Returns, eliminating 1934, is 7.75%. The five years' average, including 1934, is 8.39%.

Respondent's Exhibit 44 described.

Respondent's Exhibit 44 was then so designated.

Respondent's Exhibit 44 shows, as of Dec. 31, 1934, the same data for the stockyards operating at Wichita, Omaha, St. Louis, St. Paul, Fort Worth, St. Joseph, Kansas City and Sioux City. You will observe that the composite return for these yards average 9.923%. This figure for Denver for that year was 10.965%—about 1% higher than in the case of the other yards. I have already stated that in my judgment 1934 is not a fair year, and there-

Trans.

fore, it would be unsatisfactory to submit only this year. You will remember that in 1933 receipts were, to some extent, increased by the Government's hog buying program of that year, and therefore, it would be more representative, I think, to take another year than 1933. I have therefore prepared the figures for 1932 at Omaha, Kansas City, Fort Worth,. Wichita and St. Paul.

Respondent's Exhibit 45 was thereupon so marked.

2135 (Witness continuing). I will not take the time to go into the details as set forth in this Exhibit 45, but it shows that the composite return for these markets averaged 8.2% in 1932.

Respondent's Exhibit 45 described.

Certainly a company cannot be bonded for its full valuation if the bonds are going to be considered high grade bonds. There should be real value back of the bonds, the Preferred Stock and the Common Stock. Dr. Dozier, in his testimony, touched on the present condition of the bond market, mentioning the fact that Government bonds are selling to yield very low interest returns. There is no argument with Dr. Dozier on that score. At the moment the bonds of The Denver Union Stock Yard Company are selling to yield less than 5%, and the Preferred Stock to yield about 6.70%. If we suppose that the company has no securities outstanding at this time, it might be possible to issue bonds on a 4½% basis and Preferred stock on a 6½% basis. These securities would sell at these rates only in case a substantial portion of the valuation of the property was represented by common stock. In my judgment the earnings per share on this common stock would have to be very attractive —at least 10% of its par value or market value, in case the stock had no par value. Giving consideration to this market situation and taking into ac-

Trans.

count the market values, interest and dividend yields of the earnings per share of the common stock during the past five years, it is my belief that The Denver Union Stock Yard Company is entitled to, and should have, a rate of return of

Rate of return of 8% believed proper.

2136 8% on the valuation of the property. In a general way I would say that the factors which determine the cost of corporation financing are the following:

(1) The general credit of the company issuing the securities.

(2) The size of the issue.

(3) The form the issue takes—Common Stock, Preferred Stock, Debentures, or Mortgage Bonds.

(4) The ratio of the amount of the issue to the net worth of the issuing corporation, and the ratio of the corporation's earnings to the dividend or interest charges on the securities proposed to be issued.

(5) The knowledge investors in general have of the corporation, i. e., the securities of a widely known, successful corporation are easier to sell and command a better price than the securities of a smaller inconspicuous corporation which may be just as successful as the widely-known concern.

(6) The industry in which the company is operating, i. e., certain industries are con-

2137 sidered by the investor to be more hazardous than other industries and, naturally, the cost of financing for companies in the more hazardous industries is much greater than it is for companies operating in safer lines.

Trans.

(7) The condition of the investment market at the time the offering of securities is made.

In answering this question I am assuming that the company which goes to the public for financing is an operating concern with a record of earnings for a period of five years or more. A new enterprise is a new matter and the cost of securing capital from the public for a new enterprise is always higher.

The cost of assembling capital.

There are many items which make up the cost of assembling capital. In the case of an established business the first step is the contract between the management of the business and the bankers. In most instances such contract must be drawn up by attorneys and the proposition of the bankers is usually made subject to a satisfactory report by auditors, appraisers and/or engineers and experts who have specialized knowledge of the particular industry in which the concern operates. The bankers then proceed to get these reports which, if carefully prepared by well-known people, cost a great deal of money. If these reports are satisfactory to the bankers, attorneys are then employed to examine the titles and to prepare the legal procedure incident to the bond and/or stock issue. These
2138 attorneys also prepare the form of the securities and issue their approving opinion as to the validity of the securities. Since these attorneys represent the bankers it is customary for the concern to have its own attorneys to check the work of the other attorneys and to protect the interests of the corporation. The attorneys' fees are a very considerable item. The attorneys for the bankers also attend the listing of the issues on some recognized Stock Exchange and qualify the issue for sale in certain states where the bankers expect to secure distribution and in which there are so-called Blue

Trans.

Sky laws. In the case of a bond issue, a Trust Company is usually the Trustee and that requires another fee. If the issue is in the form of Preferred or Common stock, it is usually necessary to have both a Transfer Agent and a Registrar—and Trustees, Transfer Agents and Registrars all have to be compensated for their services. The issue must be registered with the Securities and Exchange Commission,—another fee, and large printing expense.

Within the last year or thereabouts the rules of the SEC covering the registration of securities have been changed so frequently that it has added a great deal to the expense of the preparation of registration certificates. I was in Milwaukee about three weeks ago negotiating for a piece of financing
2139 of only $300,000. I asked Mr. Arthur Fairchild, who is one of the best known attorneys in that city, and whose opinion is usually obtained on corporation issues originating in that vicinity, for his estimate as to what it would cost to register this proposed issue, because the management had asked me for an estimate. He said it was nothing but a guess but that would probably be $15,000. I exclaimed that that was 5% of the amount of the proposed issue and seemed to me to be utterly exhorbitant. He stated that in the case of a recent telephone refunding issue in connection with which the legal proceedings and the registration was handled by his firm, the cost was about $35,000. He stated that the printing bill alone was nearly $25,000, because it was necessary to keep the forms set up and make changes from time to time. Today a new issue of Bethlehem Steel refunding 4 per cent bonds has been offered to the public. I have been told that the legal and registration expense in connection with this issue exceeds $150,000. Of
1160 course, this is a large issue, $55,000,000, and consequently the percentage of expense for legal fees

Trans.

and registration is not so high. The existing laws and regulations seriously penalize any corporation in the issuance of any securities in the amount of less than $5,000,000. By that I mean that the costs of a small issue are relatively very much higher.

Up to this point in the cost of assembling capital no provision has been made for the bankers who agree to purchase the issue. In only a few instances does the investment banker expect to re-
2140 tail the entire issue himself. As a rule he expects to place with investors a portion of the issue and the balance is handled by wholesaling to other investment bankers on a division of the gross bankers' profit. The original banker expects a profit on the entire issue, although he does not retail all of it, because he takes the risk of purchasing it. If he is unsuccessful in interesting other investment bankers he must be prepared to take the issue himself and to work out of the situation as best he can. The houses that retail the securities must have sufficient profit in the business to enable them to pay their overhead, including the compensation of their own salesmen. It is difficult to state what percentage of the par value of the issue is necessary to cover the cost of assembling capital, for the reason that this varies so greatly on account of the variation in the type of the issue as well as the constantly changing condition of the investment market. I believe I am conservative in stating, however, that all of the items enumerated above as represented in the cost of assembling capital will average at this time, for bond issues, approximately 7½ per cent of the par value of the issue, if issues of $5,000,000 or less are considered. For stock issues, the average would be approximately 10 per cent of the par value, or if the stock issue is of no par value, then 10 per cent of the price at which the stock is sold to the public.

Cost of assembling capital a necessary expense in Public Utilities.

The cost of assembling capital is certainly a neces-
2141 sary investment in the usual industrial concern or public utility. Almost without exception some costs of this nature are incurred at the inception of any enterprise and, of course, during the growth and development of the enterprise quite frequently additional capital is raised from the public and the above mentioned costs must necessarily be incurred.

I have made a study of and am familiar with the capital structure of The Denver Union Stock Yard Company. Early in 1926 the Company issued $1,500,000 in bonds to replace a maturing issue. I have before me a statement of the bond discount and expense connected with the refunding operation I have just mentioned.

Respondent's Exhibit 46 described.

This statement was then marked for identification as Respondent's Exhibit 46.

This Exhibit 46 shows that the expense to
2142 the Company of selling these bonds amounted to $61,953.77. I do not consider that this is representative at all of what the cost would ordinarily be. I make this statement because at that time we endeavored to purchase the bonds associated with other investment dealers. We made a bid for the issue and our bid was approximately two per cent lower than the bid accepted by the Company. You will notice that these bonds were sold to the Stockyards National Bank for the account of the First National Bank of Chicago at a discount of $55,950, or 3.73 per cent. Swift & Company and Armour & Company who were the owners of The Denver Union Stock Yard Company were very large depositors with the First National Bank of Chicago and that bank purchased these bonds at a price which was higher than any of the other bids submitted. This expense of $61,953 on an is-

Trans.

sue of $1,500,000 makes the money cost the Stock Yard Company for a 20-year term exactly 5.35 per cent. In other words, it adds 35 hundreths of one per cent to the coupon rate, and at the time this issue was sold the issuing company was an established concern. It had been established for many

2143 years. If it is assumed that The Denver Union Stock Yard Company is not in existence and someone wants to start a stockyards as a new enterprise, I believe that it would require for assembling capital a sum of money equal to at least 15 per cent of the total amount necessary for the acquisition of the property, the construction of pens, alleys, sewers, and so forth. I have enumerated above a number of the items which go into the cost of assembling capital. Security salesmen who handle the promotion of new enterprises rarely receive less than 10 per cent of the amount of their sales and, as we all know, very frequently their compensation is double that percentage. If the men who are back of the enterprise endeavor to raise the money without the use of professional stock salesmen, they always find their work is very expensive. It requires a great deal of time, advertising campaigns, and so forth. Naturally the cost of assembling capital is very much less in case the enterprise *has been in existence* for a number of years and it can show a record of satisfactory earnings. I believe that about 7½ per cent is a low percentage figure for the cost of assembling capital under these conditions, during reasonably good times.

2144 Referring to Respondent's Exhibit 46, the first heading there, discount on bonds 3.73 per cent, that represents the difference between the par value of the bonds and the cash price paid by the Company for them. 1163

Trans.

Now on another line with respect to the testimony in this case with regard to what is known as the sinking fund method of depreciation, which demands the investment of the annual depreciation allowance and the compounding of interest thereon during a period, I know of no bonds or securities having the safety of Government bonds, that is, having the absence of hazard to the extent of Government bonds, which can be purchased today at a return of 5 per cent. I know of no securities which can be purchased with a return of 5 per cent which are comparable to U. S. Government bonds

Government sinking fund rate criticized.

2145 from the standpoint of safety. It is considered good policy to invest the funds of the sinking fund in securities which are as free as possible from hazard.

The amount of interest we could receive upon a sinking fund properly invested would determine to some extent on the length of time you wanted it invested. That is illustrated by the fact that if you are going to buy 90-day U. S. Treasury certificates, you will get a yield of about seven hundredths of one per cent per annum. If you are going to buy long term U. S. Government bonds, take the 3's, due around 1955, the yield is about 2.7 per cent, so you will have to consider the maturity of your investments, of your sinking fund investments if you are trying to establish a rate. If your object was safety, plus liquidity, I would say that you can have nothing comparable to Government bonds, either in respect to security or liquidity.

Cross-examination.

It is true that the Stock Yard Company has invested its depreciation reserve in the stockyards buildings and equipment, but when I answered the question a few minutes ago, I understood I was

Trans.

stating as to the investment in securities, not in property to be used by the Company. I reiterate that I know of no security that is as safe as U. S. Government bonds. My recommendation boils down to this,—that the Secretary find a rate of return of 8 per cent on whatever is determined to be a fair valuation of that property. Rate of return of 8%.

2146

Referring to Respondent's Exhibit 43, sheet 1, on that sheet which is captioned "December 31, 1930," is given the bonds, preferred and common stock. As of today I would quote the bonds as about 102 bid and 103½ asked. There are no bonds that I know of offered for sale and there are no orders that I know of for bonds.

As of today there are $1,135,000 of bonds outstanding. That figure is based on the par value of the bonds outstanding. We are today quoting the preferred stock at 103 bid, 105 asked. There are 8,945 shares of preferred stock. There are 31,200 shares of common outstanding, selling at 33 bid, 35 asked. That would figure the total value of the common stock as of today as $1,060,800. Adding all three together, that is, bonds, preferred stock and common stock at their today's estimated value, I make it $3,090,300. I do not know how that compares with the values found by the stockyards appraisers. I think the rate of return ought
2149 to be on the valuation as determined by appraisers instead of solely on this. I think the market on the securities may have some indication as to the value, but I don't claim it is conclusive. The Secretary should permit us an 8 per cent return and if that 8 per cent when applied to the value of the stockyards properties as found by the Secretary would result in an increase in yardage charges, I would still feel that we were entitled, as a matter of right, to earn 8 per cent upon a fair valuation

of our property. Other considerations might enter into the wisdom of attempting to do that at a certain time. For instance, a couple of years ago
2150 in the depth of the depression, the management felt it was advisable, the management of The Denver Union Stock Yard Company felt it was imperative to make some concessions to shippers and did make substantial concessions to shippers, even though we felt that we were entitled to earn more money than we were earning. However, business once in a while has to forget its selfish interests to keep the customer alive, so when you ask me if I would favor increased yardage rates, other conditions would enter into the matter than just our right to have such a return, that is, I would want the right even though we did not exercise it.

Turning to Exhibit 43 at which we were just looking, taking the date 1930, opposite bonds I have the figures 98 at 100. That means that at that date on a market that is inactive it is customary to state a quotation which you believe would be bid for bonds if any bonds appeared for sale on the market, and also a quotation at which you thought you could supply bonds if an order appeared on the market. So 98 is the bid price and 100 is the asked price.

2151 The next item under the title "outstanding" shows the par amount of the bonds outstanding. In the next to the last column I had the figure 7,194,825. To arrive at that figure we multiplied the market price of the bonds, that was 1,410,750 by 5.10, which is the yield. The last column is to get a weighted average return on all three issues. You therefore do it by multiplying the principal amount at its return, taking the total and then dividing by the total market price. You are simply weighting out the averages. Now I might illustrate it this

Trans.

way. Supposing you have $1,000 out at interest at
2152 5 per cent, and you have $2,000 at interest at 6 per cent, and you have $4,000 at interest at 7 per cent. If you want to know the average rate of return you are getting on $7,000, which is the total amount of your money, you multiply the $1,000 by 5, which gives you $5,000, you multiply the $2,000 by 6, which gives you $12,000, you multiply your $4,000 by 7, which gives you $28,000. You take the total and you have $45,000, and you divide by your 7 and your average rate of return is 6.45 per
2153 cent. I think the thing that confuses you, Mr. Miles, is that it would be possible to take this percentagewise and then you wouldn't get your figures in the millions, but you would get exactly the same net result because in the example I have used, instead of using 5 per cent I have multiplied the $1,000 by 5, not by 5 per cent, and multiplied the $2,000 by 6 instead of 6 per cent, and the $4,000 by 7 instead of 7 per cent. I then divide the total by the total funds at interest and you get your answer,
2154 6.45. If we were permitted to earn 8 per cent and we actually did earn it we would, out of such earnings, first of course pay our fixed obligations such as interest on bonds. It is not in the discretion of the management what they do to that extent, they have to pay the fixed obligations. Over and above their fixed obligations it is a matter for the directors to decide what they shall do with the surplus earnings.

With respect to any excess over and above the amount necessary to pay fixed obligations, I think the dividend policy of a company ought to be as liberal as possible with the stockholders, but it should not be so liberal that it does not build up some reserve to take care of possible catastrophies which might be incurred or unforeseen contingencies.

Trans.

2155 I cannot state definitely just what, in my opinion, should be paid by the common stockholders without taking into account many considerations which may change from year to year. If you have a company without any bonds or preferred stock outstanding, with all the working capital that is needed in the business, I see no reason why the total amount of earnings cannot be paid out as common dividends, and conversely, if you have a company which is handicapped by lack of working capital oftentimes it is unwise to pay any dividends even though earned. I cannot lay down any definite rule, it depends on so many considerations that change from year to year that I do not think you can lay down a flat rule as to what the management should do. That is why you have directors in a company who presumably are men of experience and men of ability and whose counsel is valuable to the company. I believe every business is better off if they have a surplus, how much of a surplus, as I have said before, depends on how much you have ahead
2156 of you in securities. Certainly if this company should come along to a time that is only a year or two ahead of its bond issue, of the maturity of its bond isue, the directors would hesitate about paying large dividends there; they might say: "We may be put to unusual expense at the time this refunding has to be accomplished; we had better begin to save it. You cannot tell, the market may be so bad at that time that we may have some difficulty in refunding these bonds. Now, if we accumulate and get ready for it, we are doing a wise thing for the common stock." After all the common stockholder is the owner of the business.

Q. Now, taking a stockyards as it is now financed, with your present issue of bonds and preferred stock and its common stock, how much, in your judgment, should be set aside

Trans.

for a surplus each year on the assumption that you are earning your 8 per cent?

A. I do not think anybody can intelligently
2157 answer that question for the reason that if we should, in the near future, go ahead with the plan to change our physical layout out there, if we could move our hog division so as to expand our sheep division, which in turn would cause us to change the location of a good many of our cattle pens, we are faced with this situation. We have a closed first mortgage bond issue. We cannot issue any more bonds for development of that kind. We have a preferred stock issue that has some authorized but unissued preferred stock. That, however, depends a good deal on financial conditions. I have seen the time only a year or two ago when we could not have issued preferred stock except at ruinous prices. Well, now, if the management or directors are thinking of something of that sort, isn't it good business for them to hold back some of the earnings rather than pay it all out to the stockholders because you cannot go to the stockholders and say: "Here, we paid you a lot of money last year and we want some of that money back this year because we are going to do something for the business here." My point is that you cannot lay down a flat rule as to what percentage out of the 8 per cent should be retained year in and year out.

(Witness continuing). As I remember my testimony in 1930 I said I thought that The Denver Union Stock Yard Company was entitled to a rate of return of 10 per cent. I also took issue with
2158 Dr. Dozier on his statement that in his judgment
the ideal capitalization for a stockyards company

Trans.

was one-third bonds, one-third preferred stock and one-third common stock, and I remember stating that I hope to live to see the time when The Denver Union Stock Yard Company had no bonds outstanding. What is done with the money earned by the stockyards is, I believe, within the discretion of the Board of Directors. If these Directors say to themselves: "We will pay our bond interest, we will pay our preferred stockholders, then we will pay every last dollar out for the common stockholders," they are doubtless within their rights, they probably would not be considered generally very conservative directors as if, on the other hand, they were really going to pay some dividends, some bonds, some preferred stock. I think that is a matter entirely within their dis-
2159 cretion. I say that I do not believe that 8 per cent, when you figure out of that 8 per cent you have to pay interest on your bonds and your preferred stock dividends and certainly some dividends to the common stockholders, that there would be sufficient balance to pay for your bonds at maturity. I do not think it could be done out of the 8 per cent. That is my point. I have already stated that the directors should be the ones to decide what should be done with the earnings. Personally I believe it is conservative for any company to get out of debt and therefore my personal inclination would be to devote some of your money to paying off the debt of the company.

The stockyards were refinanced in 1926. At that time the bonds were sold to the public at 98¾. The preferred and common stock financing was not done at the same time the bond financing was done. The
2160 bond financing was handled by Armour & Company and Swift & Company before they disposed of their stockholdings in The Denver Union Stock Yard. At a later date as I have stated, Bosworth,

Trans.

Chanute & Company, as it was then known, bought the common stock of the company and changed its capitalization. The outstanding preferred stock at the time of purchase was called and it was replaced by new preferred stock issue. My recollection is that the preferred stock issue was sold to the public at $100 per share. I would like to check that with Mr. Shoemaker or Mr. Reinhardt to see if my recollection is not correct. I am quite positive of it, it was $100 per share, wasn't it?

MR. REINHARDT: That is correct, yes, sir.

THE WITNESS: (Continuing). The common stock was sold to the public at $33 per share. There were some special sales made at $32. It is rather interesting that today the market *is about* what it was in 1926.

2161 The market for our securities at the present time is higher now than it was in 1926 on the bonds and on the preferred stock. By coincidence, however, I think you will find the market on the common stock is exactly the same now as when it came out. Under the terms of the bond issue, we have the right to call the bonds on payment of par, accrued interest and a premium, which was originally 103. The present call price is 102¾. The premium at which they are callable decreases one quarter of one per cent each year. It seems to me it was originally 105, and the one quarter of one per cent reduction reduced it to 102¾. We have a right to call the preferred stock at 105 and accrued dividends.

2162 In my opinion the right to call the bonds naturally tends to hold down the market price of the bonds to something like the callable price. You will find that securities in general are selling a point or two above the call price but they won't go very much higher than that. The same would be true of the preferred stock.

Trans.

Q. Now, what, in your opinion, would your bonds be selling for, let us say, December 31, 1934, when the price was 101 to 103, what would have been the selling price of the bond without that call feature, in your judgment?

MR. BOSWORTH: Mr. Examiner, at this point I wish to object as incompetent, irrelevant and immaterial. We are confronted with a condition, not a theory, here. We cannot vary the contract rights of the various holders and what these bonds might sell for under some different conditions is certainly irrelevant insofar as any rate making theory is concerned and I insist that this is incompetent, irrelevant and immaterial.

MR. MILES: Take the ruling.

THE EXAMINER: Objection overruled. Read the question.

THE WITNESS: If the bonds had not been callable, I think they might have sold at about 104 or 105 on December 31, 1934. If the preferred stock had not been callable, it might have been selling on perhaps a 6½ per cent basis, which would be approximately 110.

2163 I am acquainted with the conditions of the reorganization of the American Crystal Sugar Company, formerly the American Beet Sugar Company, about which Dr. Dozier talked. The American Crystal Sugar Company had outstanding approximately $5,000,000 of preferred stock some years ago. It had been unable to pay dividends on this preferred stock for some nine years and therefore the preferred stock had accumulated unpaid dividends of $63 per share as of July 1, 1935. The management of the company offered a plan to the preferred stockholders for funding these arrears in dividends by the issuance of 1.6 shares of new 6

Trans.

per cent preferred stock for each share of the old 7 per cent preferred stock, plus $3 in cash. I don't know whether that answers the question you meant, but—I was very much amused that Dr. Dozier would pick on a preferred stock of that character to cite as an instance of what preferred stock would sell—like The Denver Union Stock Yards would sell at, because he was picking a stock that had a face value, due to these arrearages of $163 a share and which at that time was selling at about $120 a share on the strength of a recapitalization, a probable recapitalization. I thought it had absolutely no relationship to a preferred stock which had regularly paid its dividends year in and year out. It was a speculation, to make my point clear, rather than an investment.

The Denver Stockyards has not defaulted on its bonds or on its preferred stock. I would not say that that is quite contrary to the usual experience of hundreds of industries in this country. I think it is one of many, many companies that have not defaulted on bonds or preferred stock. I would say that the majority of companies have not had to default. We are apt to get the impression because you and I get hit once in a while on a security that does default, we are apt to think everybody is doing it, but I believe statistics will show that there are more bond issues which did not default than those that did.

2165 In 1926 underlying railroad bonds of the highest grade were selling on about a 4½ per cent basi In 1930 the yield was around 5 per cent and today it is around 4 per cent. Of course the question of
2166 maturity enters in. Long term bonds have a greater fluctuation in yield than a short term bond. I would say that the yield, the trend on yield on the bonds has been downward decidedly from 1928 to

Trans.

this time. I would think that there is very little difference in the yield on preferred stocks in 1935 as compared with 1928. I think the yield on common stocks is approximately the same. You see, 1928 was a year prior to the culmination of the greatest bull market in the history of this country, and while common stocks as a class are paying lower dividends in dollars per share now than they
2167 were in 1928, I think the price is lower correspondingly and the yield on common stocks today I believe is not greatly different than it was in 1928. I am merely giving this from recollection and as a matter of opinion. I am not stating a fact.

Q. Surely, that is understood. Do you know whether any stockyards in the United States have defaulted in the past five years on their interest?

MR. BOSWORTH: Objected to as incompetent, irrelevant and immaterial as to whether they have or haven't, on any question here.

(Witness continuing). I would like to know what you mean by stockyards. Dr. Dozier showed that there were 88 stockyards in this country and I did not know there were so many, or even if, as Mr. Bosworth tells me, there were 83 I did not know there were so many. Therefore, if you take all of those in I cannot answer. I know only about 15 or 20 stockyards that I have always considered the stockyards of the United States. Of all these
2168 major stockyards, I know of no actual defaults. I know of two situations which would have defaulted had it not been for Swift & Co. and the General Stockyards Corporation who stepped in and prevented it.

There have been many defaults in the industrial line and public utilities of the country in the past five or ten years.

Trans.

I have stated that I know of no industry comparable with the stockyards by which you could use their securities as the basis for an opinion of the rate of return of the stockyards. I do not say that there is none but so far as I am concerned I
2170 know of none. You can call the figure, I suggest a judgment figure if you like, but I tried to make it clear that if you recognize the necessity of attracting capital to a business, you must find a rate of return which, as a matter of judgment, is necessary to cause that capital to flow to that business. It seems to me that the best index of what is necessary in this case is to endeavor to find out what stockyards securities for some years past have offered to the investor through yield or return. There have been manufacturing businesses that have been fully as stable as the stockyards industry during this time of depression and for the past ten years, such as the Bon Ami Company, in whose securities we have recently been interested. They are, however, the exceptions.

Hazards of business must be considered.

For many reasons the investor in the stockyards would not be satisfied with the same interest, the same rate of return, as he would receive on Government bonds. When you buy Government bonds you have the I. O. U. of the Government. You have no problems in management, you have no hazards except possibly the hazards that some day some nation will be big enough to come over—of course we will never see that happen, but we will agree that there are practically no hazards. When you go into any line of business you immediately have a lot of problems and a lot of troubles and a lot of situations you have to meet, and it is a very different matter than simply paying the obligations of the strongest country in the world.

The problems of management are all problems to be considered by the management that we secure

Trans.

by going into the open market and bidding for that management. That management is paid for out of the operating expenses of the company. Among the hazards of this business because of which the public insists upon receiving a larger return than they would receive from Government obligations are: weather, freight rates, fluctuating receipts and many things.

I stated that, "one of the hazards of the business is weather." It is easy to appreciate this fact in the light of events of the past few weeks. Floods in the territory tributary to the Denver market have washed out many miles of railroads, with the result that thousands of livestock, unquestionably bound for this market, had to be diverted elsewhere. I was referring to the floods around McCook, Nebras-
2173 ka, and other sections of Nebraska, or western Nebraska, and western Kansas where the railroads were washed out to such an extent that shipments were stopped to Denver and it was told to me several thousand head had to be diverted. I received this information from the management of the Company when I inquired about it, and in my opinion the conditions just referred to caused a permanent loss to the stockyards in that we permanently lost the revenue of those particular head of livestock. I don't claim that the stockyards has suffered a permanent loss because that business that is tributary to this market is going to come back when the facilities are reestablished.

Public reaction.

I want to emphasize that as an investment banker I have to appreciate the way the public is going to regard these hazards. You and I, from our experience, may have specialized information on any situation, and you and I are not influenced by some of these things to the extent that the public
2174 is influenced. For example, when we had this sale

Trans.

in transit case before the Interstate Commerce Commission, we had many security holders that were very greatly frightened because the newspapers presented the matter as a life and death situation. We felt that it was a terribly serious situation, but not a life and death situation. Those newspaper articles disturbed the security holders and they came running into our office to make inquiries about it. Now, in testifying to these hazards, I have endeavored to testify as to what the investing public was afraid of in this business, and why they would not go into, invest their money in this industry unless they had an 8 per cent return, in my opinion.

That is, I have attempted to evaluate the fears of the public rather than my own conception of the hazards.

Whereupon Respondent's Exhibits 43, 44, 45 and 46 were offered and received in evidence.

Respondent's Exhibits 43 to 46 Admitted.

2176 MR. A. REINHARDT, witness for the respondent, after being sworn, testified as follows:

My name is A. Reinhardt, I am employed by The Denver Union Stock Yard Company as Secretary and Assistant Treasurer. I am in charge of the accounts. I was present when Mr. Bufkin testified. I remember Mr. Bufkin's testimony to the effect that accounts receivable were not included in the working capital allowance as made and recommended by him because the business conducted by the Stock Yard Company was practically a cash business. I have analyzed the accounts receivable of The Denver Union Stock Yard Company as of

Accounts receivable excluded from working capital.

2177 December 31, 1935 and they are, as shown by our tabulation, in the amount of $23,271.40.

Government Exhibit 38, the first page, showing the balance sheet as of December 31, 1934, shows under the current asset column accounts receivable

Trans.

Analysis of Accounts receivable

in the amount of $23,233.52. In other words, there is a difference of about $40.00 between Mr. Bufkin's figures and mine.

My tabulation shows that the shortest period of time represented by any account shown there is ten days, and there are numerous items running 30 and 60 days. For instance the rent account of the Bureau of Animal Industry in the amount of $554.81 was outstanding 240 days as of December 31, 1934.

The witness then presented a tabulation of the accounts receivable, made as of the date of the witness' testimony. Many of the items shown were read into the record, together with the lengths of time each had been outstanding.

2181 (Witness continuing). The total of all the items that are shown on this tabulation, which I will reduce to typewritten form and furnish to the Government, is $23,271.40. Our accounts receivable at the end of the year are less than they are as an average for the year. The average accounts receivable on the basis of a monthly average for the year 1934 were approximately $38,000.00, and in my opinion, the age of the average account of this monthly average of $38,000.00 is about the same in makeup as that which I have read.

The condition as to the age of the accounts as revealed by my analysis as of December 31, 1934, is a fair representation of the age of the accounts at the closing period of the years 1930, 1931, 1932 and 1933. In other words, there would be approximately the same number of ten-day old accounts, same number of 30-day accounts, same number of 60-day accounts, etc., and in approximately the same amounts.

Trans.

The total of approximately all the $38,000.00 of outstanding accounts to which I have testified represents the amount of cash necessary to carry the accounts receivable.

2182 *Cross-examination*

The reason why this bill of the Bureau of Animal Industry outstanding eight months has not been paid is, I believe, because of some voucher difficulty at the Washington office.

2183 MR. BOSWORTH: I would like to have it appear on the record that with the estimable credit of the United States Government, we are not exactly worried about the fact that the B.A.I. is 240 days back, but we are offering this evidence from the standpoint of showing that this company, contrary to what Mr. Bufkin testified, is not entirely on a cash receipts basis and has need in its working capital for the usual allowance for accounts receivable. I don't want it understood that we are kicking at the fact that the Government owes us several hundred dollars. We would like to have more credit of that sort.

(Witness continuing). This 240 days delinquency of the Government is probably unusual, but as a rule they are from 60 to 90 days behind. We have a lease with the Bureau of Animal Industry covering this rent.

Q. What actual outlay of cash was made by you in connection with this lease to the B.A.I. covering this eight months period in which they were delinquent?

A. Well, I could best answer that by stating that it is among the group of our accounts receivable, which total quite an item during the year.

Trans.

Q. Yes, sir, do you think that the rate payer when he pays his rates should pay for the delinquency of the Department of Agriculture?

A. I believe that the rate payer should pay a sufficient amount to provide a working capital.

Q. Now, specifically, should they pay for the delinquency of the Department?

A. Well, there will be some delinquency in all accounts and in all business.

MR. BOSWORTH: Now, Mr. Examiner, I would like to object to this line of questioning on the ground that it is incompetent, irrelevant and immaterial. The theory back of accounts receivable in working capital certainly does not mean that the delinquency of one who owes us a bill is charged against somebody else who doesn't owe us a bill, any more than a working capital allowance for a gas company or an electric light company. I, as a patron, may pay my bill and yet my rates must include a proper allowance to that electric light company to take care of the fact that maybe Mr. Reinhardt hasn't paid his bill.

In other words, this line of questioning is entirely beside the point of the question of working capital, which is all this witness was interrogated about.

MR. MILES: There is this difference between the Captain and myself. He is dealing with a theory and that theory is kicked to death by a fact, and I am trying to develop a fact, that is the only difference.

THE EXAMINER: Well, I think you can bring out the facts but I think it is a question of law after you get the facts as to whether the rate payer should pay or not.

Trans.

(Witness continuing). Leaving out of consideration our rental accounts it remains true that all of our business done at the stockyards is charged. It is not done on an actual cash basis or a 24-hour basis. I would say that it is a four or five day basis according to when the livestock is sold. It is true that with some of the people for whom we charge we expect to collect from them the next day after we render the bill.

Outside of the leases practically all of these bills are due when we present the bill. That follows in our business as well as in others.

2191 J. A. SHOEMAKER, a witness called by the Respondent, after being sworn, testified as follows:

My name is J. A. Shoemaker. I am President and General Manager of The Denver Union Stock Yard Company. I have been acting in that capacity since 1926. From January, 1913, to 1926, I was General Manager of the Company. I have been connected with the stockyards industry as such since 1907,—a period of twenty-eight years. I am also President of the General Stockyards Corporation. I was here when Mr. Pexton testified and heard his testimony, and I concur and agree there-
2192 with. His testimony, in the main, expresses the considered views of the management of The Denver Union Stock Yard Company.

Testimony of witness Pexton presents considered views of the management.

With reference to Mr. Wolf's testimony, he was asked if trader livestock could not stay in the pens indefinitely. There is no difference in the trader's livestock in this respect and the livestock of the grower, the feeder buyer or any other buyer. The yard trader receives practically the same services from the Stock Yard Company as that available or received by any other buyer on the market.

All livestock unlimited as to stay in pens.

Trans.

Expansion Plans.

At another point in the testimony there was introduced into evidence a plan concerning the erection of pens on the area north of Race Court. There was also testimony by Mr. Pexton concerning the removal of the hog facilities and the enlargement of sheep facilities. These, among other plans for extension and improvement of the yards, have been discussed informally with the Board and Executive Committee at different times durng the past few years, as mentioned incidentally by Mr. Arthur Bosworth this morning. I heard Mr. Christensen's testimony. He recommended the disallowance as a stockyards facility of certain alleys which he designates as chute alleys, on the grounds that they are transportation facilities used in connection with and almost exclusively for the unloading of livestock. These chute alleys are so called because they are the alleys nearest the chutes. There are four of them running lengthwise of the yards, one on each side of the cattle division and one on each side of the hog and sheep division. While naturally these alleys are used for the movement of livestock to and from the unloading chutes, they are used, I would say, much more for miscellaneous operation of the stockyards. For example, the truck-in livestock is moved to ~~some~~ of these chute alleys to reach sales pens. Likewise, hogs, sheep, and cattle use these alleys from the stockyards to the packing houses, both those packing houses adjacent to the yard and at some distance. These alleys are frequently used for livestock going out into the country by truck and livestock moving from one end of the yard to another, or from one

Chute alleys generally used.

2194 part of the yard to another. These alleys are used, in addition, in the distribution of hay and bedding and cleaning pens. I would consider them more generally used than any other alleys in the yards, though all alleys are naturally provided to get

Trans.

around blocks of pens, and no alleys are limited to any specific use and cannot be. Mr. Christensen attempts to classify the alleys as a specific use, calling some general alleys, and so forth, and as a part of that classification he had this classification of chute alleys. There is no such thing as a specific use for alleys in stockyard operation. The alleys are like streets in the city. They run between blocks in all directions and are used for all purposes of stockyard operation.

All alleys generally used.

In my opinion the Stock Yard Company does not have excess cattle facilities considering the peak seasons which cover the fall shipping season, that is, the four months of fall, September, October, November and December, during which time is received the peak of the business. For these four months our receipts of cattle and calves run from 50 to 60 per cent of our total receipts of cattle and calves for the year. During this time our facilities are unusually taxed to their capacity and frequently we would be glad to have more pens. It isn't
2195 simply a question of taking care of the receipts for one day, but there is always a carry-over from one day to another. Half of them will be carried over to the second day and a substantial part of this will still be in the yards the third day. I would say the receipts of cattle and calves arriving at the yards in one day will average two days in the yards. A great many of these cattle do not get into the sales pens until nearly noon and frequently by the time they are sorted up and taken care of, the market has closed and naturally a great many of these cattle are not out of first hands until the second day. Of course, the market has a lot to do with the time livestock will be here in the yards, whether it be an active or slow market. On an active market we will turn our receipts faster than when the market is slow and dragging.

No excess cattle facilities.

Trans.

Hog facilities inadequate.

2196 Now with respect to the hog and sheep division. During the fall of the year and in the case of hogs,
2196 more especially during the winter months, there is more or less congestion. I have seen days when we have had hogs all over the downstairs of both the hog division and the sheep division.

No excess sheep facilities.

In the case of sheep, in the fall of the year our sheep facilities are taxed to their capacity. We try to relieve the barn as much as possible by yarding through sheep in the cattle yards. In other words, our barn is not now sufficient in capacity to handle the entire receipts of sheep through the peak season. As a matter of fact 60 to 70 per cent of the earnings of the Stock Yard Company are made in four of the fall months, and if we did not have facilities to take care of these peak months, the best part of the year's earnings would disappear.

Q. Are you familiar with the area which the Government counsel and real estate witness have apparently picked as a stockyard location or comparable land ——

MR. MILES: Objection, certainly most emphatically. There is not a scintilla of evidence in this record that we ever picked it as a stockyards, never.

MR. BOSWORTH: How about as comparable land, Mr. Miles?

MR. MILES: Never heard of it, Captain, completely in the dark about what you are talking about.

2197 MR. BOSWORTH: Is that officially on the record that you have no such intention when you talk about the sale and so forth of this area between 48th and 52nd and Race Court, and Steele Street?

Trans.

MR. MILES: Why, Captain, let me say this, I thought you were laboring under a delusion and I still think so, the question you propounded to the man was whether an area of so many acres, conservatively 70 and maximum of 130 of vacant ground could be found. Well, surely we could prove that it could be and we did but never had any intention of locating a stockyards there or any other stockyards.

MR. BOSWORTH: Well, for fear that the reviewing authority may be perhaps laboring under the same misapprehension that I am, I am going to hand Mr. Shoemaker a group of photographs and ask if he can identify those photographs.

A. Yes, sir.

MR. BOSWORTH: (Continuing). Will you have those marked as Respondent's Exhibit 47 and 47a to l inclusive? Now, Mr. Shoemaker, I am handing you a map which you have marked also as a Respondent's exhibit, I believe Respondent's Exhibit 48, and I will ask you whether or not the location where each of these photographs comprising Respondent's Exhibit 47a to l was taken, so the record may be clear; each photograph is numbered on the face of it consecutively 1 to 13, that is the numbers run from 1 to 13 consecutively. Mr. Shoemaker, the question which I asked was whether or not the location and direction from the location in which these pictures were taken is shown upon the map Respondent's Exhibit 48?

Respondent's Exhibit 47, 47a to l, and 48 identified.

2198 The witness then identified the photographs and the map, pointing out the dissimilarity of the land to the stockyards land. In view of the fact that the final report of the Secretary does not mention this land, the testimony is omitted.

Trans.

2200 In my opinion, the land included in the area bounded in red on the map, Respondent's Exhibit 48, is not comparable in any manner to the stockyards area involved in this case; of course, I am not speaking of the quality of the soil. The Platte River, insofar as the drainage and possibility of sewerage is concerned, is about half a mile from the nearest point. In my opinion, this land is not in any manner comparable to the stockyards tract. An area 75 to 110 acres could not ~~be~~ carved out of that tract which would be comparable to the stockyard tract without great expense.

R. R. Trackage.

Now, with reference to the agreement between the Stockyard Company and the various railroads covering the joint use of railroad tracks and fixing the value of that railroad trackage owned by the

2203 Company at $8,772.00: This agreement, of course, was not reached in a day. It involved a considerable period of time to reach a basis which was satisfactory to all of the parties. The Stock Yard Company insisted on the valuation of this land on the basis of $10,000.00 per acre, plus cost of railroad tracks and grading and interest at the rate of six per cent per annum on the total of this valuation, and an allowance for general taxes. It took many meetings and considerable correspondence to finally get the difference between the parties ironed out. The executives of the railroads and the stockyards reached an agreement whereby the railroads would pay six per cent interest on the value of the land at $8,772 per acre, on the railroad tracks $3.17 per foot, plus grading and filling, and in addition pay the Stock Yard Company an amount equal to the mill levy for general taxes on one-half of this total amount, and left it to the engineers of the various railroad companies to later report on the length of track, acres of land and value of filling and grading, which they did. In other words, the

Trans.

value per acre was fixed and agreed upon as raw land with the railroad executives and the amount of fill and other cost items were left to be fixed by the engineers.

Advantages of Company ownership of trackage.

From my experience in the management of the
2204 stockyards, I am of the opinion there is an advantage in the Stock Yard Company owning the tracks serving its facilities. Before we had the tracks on the river, we were very badly congested at times because of so many railroads wanting to use the few tracks we had. We have had more cars of livestock waiting to load or unload which could only use the Burlington tracks than there were trackage facilities to accommodate them. The same thing has happened with reference to the Union Pacific. It has frequently happened that at the time when we were lining up to load livestock out of the yards on the various lines, there was livestock coming in in numerous quantities on those lines. We could not unload Burlington livestock on the Union Pacific tracks, neither could we unload Union Pacific livestock on Burlington tracks. We could not unload Denver and Rio Grande livestock on Union Pacific tracks because that business was switched by the Burlington Railroad. We could not unload Santa Fe livestock or Colorado and Southern livestock, either one, at the Burlington chutes, but both of these had to be handled by the Colorado and Southern which had joint use of the Union Pacific tracks. So we had only one set of chutes, which are now those on the easterly side of the sheep and hog divisions, which were served by the tracks owned by the Stock Yard Company, and this track was nearly all the time overtaxed, especially during the busy season, it being the only track in the yards which could be used by all railroads. This situation was greatly relieved when we built the other tracks on the river side of the 1187

Trans.

yards, and I am sure that if we had control of the tracks that are owned by the Burlington and the Union Pacific our operating problems could be more simplified and even better service rendered more economically that it is now being done.

2206 The patron, and by patrons I include the producer, benefits from such ownership in the way I have described, in the saving of time of getting his livestock unloaded at the part of the yard where it can be unloaded with the least shrink, and likewise in getting cars placed for loading at the part of the yard where they can be loaded with the least delay.

Trackage and chutes are Stockyard facilities.

In my opinion, the Stock Yard Company trackage, chutes, chute pens and chute alleys are used in handling of livestock in commerce. The tracks, as I have described, unquestionably those tracks, the chutes and chute pens are used for the handling of livestock in commerce. The chute pens are the pens into which the livestock is unloaded from cars and placed for loading into cars and are in the same relative location as the chute alleys elsewhere referred to, along both sides of the cattle yards and along both sides of the hog and sheep divisions.

It frequently happens during the busy seasons when our sheep runs are heavy that we take sheep directly from the scales and yard them in the chute pen of the river chutes or the U. P. chutes, of which there are 26, and sometimes in the Burlington chutes, what we call the Burlington chutes, if we believe the sheep are going to be ordered shipped out that day and are not required to go on feed again before being shipped out. This saves pens in the sheep barn which are needed for sheep that may not be going out, or at least any number of pens which this does release in the sheep barn are used as needed.

Trans.

2207 The same thing is true with reference to the cattle division. In the fall of the year there are many days when we can and do use these chute pens for yarding carloads off the scales, which we know are going to be shipped out that same day. This not only saves pens which may be needed for cattle or feed and water, but it also saves the Stock Yard Company time in yarding cattle from the scales. Ordinarily the first pens to be filled by cattle from the scales are those nearest the scales, so that the more cattle that are weighed the further they have to be driven from the scales to be penned. To save time the Stock Yard Company will put carloads of cattle into chute pens on either side of the yard if those chute pens are not immediately required in the process of loading and unloading. **Chutes often used for yarding off scales.**

Now with regard to another point which has been touched upon in testimony, that is, the question of manure disposal: We had some controversy with representatives of the Government and the Department of Agriculture concerning that matter; that controversy is shown by certain letters which have been made exhibits in this case. **Manure disposal.**

Prior to the acquisition of the 30 acres of land from the Riverside Cemetery Association, which was purchased in December, 1916, the only place we had for dumping manure was a limited area along the river back of the packing houses, and
2208 the small area which we owned north of Franklin Street. Disposing of manure at that time was a serious problem. We used the manure dump to load it out and in effect gave manure away to people to get them to take it. We dumped it any place where we could find room because our space in which to dispose of manure was very limited, and we had to use every nook and corner of vacant land available. I remember, I think it was in the

Trans.

summer of 1916; the Post Mortem Division of the Bureau of Animal Industry was conducting a campaign to eradicate the fly nuisance around packing houses. About this time a Mr. Joss of the B.A.I. came to me and protested about our dumping manure close to the packing houses. He got rather tough about it and told us that we were liable to prosecution for doing that sort of thing, and I remember that I stated that I didn't understand that we were subject to the packing house inspection rules. Dr. Mohler's letter shows that the Department agreed with our position reluctantly.

But in any event to comply with their insistent demands, we tried burning it. The smoke from burning manure is not the most agreeable odor that you can imagine—it isn't any Coty's perfume—so that we had only gotten nicely started on this program when we began to receive protests from the east end of the city, particularly from the residential section nearest the yards. The city health authorities came out to see if we could not get some other way to dispose of manure. For a while we talked them out of it as it was the only way we knew how to handle the problem. Furthermore, after we got started burning this manure, we found the fire was not as easy to stop as it was to start, and we frequently had to call the fire department to get the fire under control.

2209 We managed to get along in a haphazard sort of a way until this time we bought 30 acres of land from the Riverside Cemetery Association adjoining our property on the north. We bought this land on an option for stockyard purposes, one of which was manure dumping. In any event, having purchased the land, our difficulties in this respect were solved. The Bureau approved the dumping of manure on this land, and since this time we have

Trans.

had no further complaints from the packing houses nor from the Bureau of Animal Industry. If we had not bought the land from the Riverside people we would have had to buy land from somewhere else or made some other arrangements for the disposal of manure, which would have been more expensive.

When we fully utilize this tract with structures, as we expect to do, we will have to buy more land whether we like it or not for manure disposal.

Now with reference to the effect of the so-called Security Act or the Social Security program upon the stockyards. I have been following that Act, though I have not been able to keep informed as to the various amendments proposed. The tax on each will be one per cent beginning in 1937, increasing one-half per cent every third year until it reaches three per cent after 1948. This will mean that the Stock Yard Company will have to pay on its payroll one per cent in 1936, two per cent in 1937 for unemployment insurance and one per cent for retirement annuities. In 1938 these taxes will total four per cent; in 1939 they will be four and one-half per cent the tax for retirement increasing one-half per cent every third year until it reaches three per cent after 1948, after which time the unemployment insurance will also be three per cent, or the two will total six per cent at that time. Social Security Act.

Our annual payroll will run from $150,000 to $170,000. Of course, that is what it has been running in recent years, so that for 1936 the tax would be one per cent, or a minimum of about $1,500; in 1937 it would be 3 per cent, or $4,500; in 1938 it would be 4 per cent, or $6,000 if our total payroll did not change and would reach a total of 6 per cent after 1948, which would be $9,000. 1191

Trans.

I mention this merely that the Secretary's attention may be called to the matter, for I appreciate that he will be in better position at this time to know the effect of this legislation than we do, not having the bills before us nor knowing of the various amendments that have been made to the bill.

Traders' strike.

2212 Now with reference to this so-called traders' strike, on September 15, 1931, we wrote a letter addressed to the Denver Livestock Exchange, commission firms, stockyard traders and others concerned; it was written as a result of an inquiry and hearing conducted by the Secretary of Agriculture during the month of February, 1930. This letter was sent to the yard traders and others advising yard traders in particular of that fact that certain half yardage charges, as they were called, had been assessed against them by the Secretary of Agriculture. This document is now marked as Respondent's Exhibit 49.

Respondent's Exhibits 47, 47a to 47l, 48 and 49, admitted.

Whereupon Respondent's Exhibits 47 and 47-a to 47-l, inclusive, Respondent's Exhibit 48 and Respondent's Exhibit 49 were offered in evidence and an objection thereto on the grounds of immateriality was overruled and the exhibits admitted into evidence.

Cross Examination.

I was present when Exhibits 47 and 47-a to 47-l were taken. In taking those photographs the camera was at an elevation of approximately 3½ feet above the ground. In my opinion, these photographs accurately reflect the conditions that they are supposed to show. I don't believe they could exaggerate very much.

Hog facilities in peak seasons.

With reference to the removal of the hog and sheep pens and the installation of cattle pens north

2214 of Race Court: Our plans are rather indefinite at

Trans.

the present time. I do not know what they will be a little later because we make plans and sometimes modify them, but certainly we have plans for needed changes in the yards and those changes we feel are imminent, and what I mean by that is that they may not have to be done next week or next month or possibly this year, but we naturally recognize the necessity for further improvements in the hog and sheep facilities.

We have been discussing these matters at our meetings for quite a while, I would say more or less for the past five years.

Now with reference to the hog congestion during the winter months: It is true that up to date we have been able to take care of all the hogs that arrive at the yards during the peak season; of course, not in the manner in which we would like to do it always. As I say, we should have better facilities and more pens to take care of our hogs. When we get large runs we have to spread them out over into the sheep barn. While Mr. Christensen testified that those facilities for hogs and sheep might be used interchangeably, it is not entirely satisfactory to do that. We find that our sheep friends object to hogs being put into the sheep pens. Now, I do not know whether the sheep or the hogs have any objection or not. However, by using the sheep and hog facilities interchangeably during the peak season we get by, lots of times not satisfactorily though, and we naturally over a period of years keep in mind or try to have in mind the needs, the things that need be done, because after all we are there to serve the men that bring us our money and if we do not take care of their business satisfactorily, why we soon lose it; there are too many places they can go, they are not tied up or sewed up to The Denver Union Stock Yard or the Denver Livestock market.

Trans.

Peak season for sheep.

We cannot use the cattle pens for yarding hogs but we do use the cattle pens somewhat for sheep, as I have described, the sheep that do come on to the market, that is we will say through shipments that are not offered for sale. We try to keep the barns free from that so we will have room to do the things we need to do for the market sheep. The peak season for cattle and sheep are the fall months; I would say it might be a month or two different, according to whether they started shipping early or late, but they run September, October, November and December. Peak, our peak shipments on sheep are usually August, September, October and November. Hogs are the winter months and by that I mean, November, December, January and February, more especially November, December and January.

It is of course possible to figure mathematically the capacity for cattle, sheep or hogs. We have something over a thousand cattle pens. They are not all carload pens, but assuming that we had a thousand carloads of cattle coming in here in one day, it would be possible to put a carload of cattle in each one of these pens. Of course, when we get the checker board full, there is no place to move
2217 them, so we cannot do business with all of the pens full. The number of head which it would take to fill those cattle pens would differ with the season of the year. For instance, in the fall season you have younger cattle and you run more to the pens just as the number of cattle in the carload runs more to the car. In the case of sheep it is a good deal the same way. Assuming that we do not use the various facilities interchangeably, that is sheep facilities for hogs and hog facilities for sheep, but instead use cattle facilities only for cattle, hog facilities only for hogs and sheep facilities only for sheep, I would say that we could handle in our

Trans.

yards in one day approximately 5 or 6 hundred cars of cattle; if sheep, not over 150 cars, say rather 100 to 125 cars. We certainly could not handle as many hogs as we do now; I would say that about 100 cars per day would be about as many as we could take care of. The largest number of hogs that we have actually handled in a day is about 10,000 head, that is about a hundred cars. The hogs will run about 75 to the single deck. Of course, they will run more in the latter part of the shipping season than in the beginning.

In the case of sheep we have had 100,000 in the yards in one day. However, I want to make it clear that when we have had 100,000 sheep arrivals in one day that means that they have a lot more sheep in the yard than that, and that is true with reference to hogs and also with reference to cattle, so when we handle 100,000 sheep in a day there are more sheep in the yards than 100,000. They are put in the cattle yards from one end to the other. The largest number of cattle we have ever received or handled in a single day is 28,000.

Re-direct Examination

When I spoke of 100 cars of hogs I was speaking of single deck, around 75 to the car.

Whereupon the witness was excused.

2220 MR. L. M. PEXTON, a witness called by the Respondent, having previously been sworn, returned to the stand and testified as follows:

Re-cross Examination.

Cost of grading and filling.

On cross-examination I was asked to determine the cost of grading certain railroad tracks owned by the Stock Yard Company. Our books show that we expended in 1915 $6,273.00 for filling; in 1916, 1195
2221 $4,000 and in 1917, $28,161. These were straight

Trans.

out of pocket expenditures specifically for filling. The majority of this amount was expended in the sheep barn district and along the river tracks.

2222 I was also asked to estimate the probable future receipts of the Company over a 5-year period from 1936 to 1940. I have spent the last several nights working on this problem and endeavoring to make some kind of an estimate for the years 1937, 1938 and 1939. We have already estimated our receipts for 1935 and 1936. Due to the many factors which influence livestock production and receipts at the Denver market, we find it pratically impossible to make any estimates for the years 1937, 1938 and 1939 which would not be highly speculative and a mere guess. As is common knowledge, livestock production depends upon climatic conditions, amount of feed available, livestock prices, industrial conditions, Governmental regulations, forest reserve restrictions, public domain restrictions and other matters of a similar nature. For these reasons, we have found it impossible to make anything more than a mere guess which anyone familiar with livestock receipts at Denver could do.

(Witness excused).

Respondent's Exhibit 50 admitted.

The tabulation of accounts receivable as of December 31, 1934, concerning which Mr. Reinhardt testified, was offered and received in evidence as Respondent's Exhibit 50.

MR. BOSWORTH: Mr. Examiner, early in this hearing as to certain features of the case, Respondent objected on the grounds that that matter or those matters had been decided by the statutory court of three judges in the prior hearing, known

2225 as The Denver Union Stock Yard Company against the United States of America, the Secretary of

Trans.

Agriculture, which case was reported in 57 Fed. (2nd), I think at page 745. I am not exactly sure of the page.

MR. MILES: Correct.

MR. BOSWORTH: Our objection was overruled by the Examiner. We would like to have it understood that insofar as the testimony of the Government is contrary to that decision, our going forward with evidence in answer to the Government's case is not a waiver of that objection. Of course, it follows that as a matter of law the Government has the right and Government counsel has the right to claim that that case is not binding or to take any other legal position they care to take with regard to that decision. I merely want it understood that that objection, whether good or not on our part, goes to such testimony and such evidence as donations, what might be termed land for expansion, railroad trackage and facilities, the stock show and stock show property, and other similar items which we feel have been decided by that prior case. As I stated before, I do not mean to foreclose in any manner the Government from taking the position from a legal standpoint that the case is not controlling. I believe the Government counsel has no objection to our objection applying to that line of testimony.

MR. MILES: That is correct. I will say, however, that by that position I do not mean to waive the right of the Government to stand on the legal proposition if such there be.

2226 MR. BOSWORTH: That is absolutely understood, of course.

MR. MILES: Yes, sir, and I wouldn't want your statement that it was understood that you should put this on to mean that there is stipulation that your position was correct.

Trans.

MR. BOSWORTH: Oh, absolutely not, Judge Miles. I am not seeking in any way to take any advantage or any unfair advantage.

MR. MILES: I know you are not, sir.

MR. BOSWORTH: No, I want you to be perfectly free to maintain your position and we to maintain ours.

MR. MILES: I appreciate that, sir.

MR. BOSWORTH: With that, Mr. Examiner, the Respondent rests.

Government's Rebuttal Testimony

MR. MILES: Mr. Examiner, during Mr. Dozier's testimony there was introduced Government Exhibit 53 entitled "The Direct Marketing of Hogs." It is publication No. 222. We agree to furnish copies to Respondent. The copies are now available to you.

MR. C. L. HARLAN, a witness called by the Government in rebuttal, after being sworn, testified as follows:

My name is C. L. Harlan. I reside in Washington, D. C. I am an employee of the Department
2227 of Agriculture and have been so employed for about thirteen years. I am now in the Bureau of Agricultural Economics and have been there thirteen years. My title is Principal Agricultural Statistician. I have charge of the livestock work of the Division of Crop and Livestock Estimates and also the Crop Reporting Board. I have been in charge of that work for about eleven years.

I have a university degree. I have taken special work in agricultural economics. I have operated a farm in Iowa for about nine years and a ranch

Trans.

in Wyoming for about three years, from 1910 to about 1913 or 1914 and since from about 1920 up to the present time.

I was requested to make a study of conditions prevailing in the livestock industry in and about the Denver territory. I began work on that study about two and one-half months ago. For my sources of information I rely largely on records available in our office in Washington. They are public records to the extent that they are available to people who wish them in most cases. To some extent, however, they are records furnished us by stockyard companies as being confidential and in that
2228 respect we do not give them to anybody except with the approval or consent of the stockyards involved.

In this work I was assisted by two clerks in the office.

I have prepared a statement which embodies my views based upon my study. That study is as follows:

2229 CATTLE AND CALVES

Sources of cattle supply at Denver.

Practically all of the cattle and calves received at the Denver Stock Yards came from 5 States which ranked according to importance are Colorado, Wyoming, New Mexico, Texas and Nebraska. Of these 5 States, Denver is the natural market for the first three,—meaning by "natural" market one which is situated along the route by which livestock normally moves from areas of production to areas of consumption. The general direction of the normal movement for the whole area be-
2230 tween the Missouri River and the Rocky Mountains is from west to east and from southwest to northeast. The receipts from Texas consist almost entirely of stock cattle going for grazing and largely passing through Denver and not offered for

Trans.

sale. Receipts from Nebraska tend to be moved against the normal current of traffic, but come to Denver because of the convenience of that market from the standpoint of distance for a few counties in the southwestern corner of the State. Receipts from Colorado and Wyoming, and to less extent, New Mexico, will tend to be influenced by changes in numbers in those States. Receipts from Texas and Nebraska are little related either to cattle numbers or total marketings from those States.

From 1900 to date (see table 1) the receipts of cattle and calves at Denver have tended to be an increasing percentage of the cattle on farms in the 3 States of Colorado, Wyoming and New Mexico. While there have been cyclical movements both in cattle numbers and in receipts at Denver, the average of these receipts over 5-year periods as a percentage of the same 5-year average of cattle numbers has increased. Total estimated cattle numbers in these three States on January 1, 1935, was about the same as on January 1, 1929, 1913 and 1904. January 1, 1929, was the low point of a cycle of numbers but 1913 and 1904 were intermediate points; 1935 was probably a low point. Cattle numbers during the next five years in these States will tend to increase but the increase will probably not be as marked as in the 5 years, 1929 to 1934, which it was about 28 per cent, although in 1934 numbers were materially below 1918 (about 16 per cent). It is to be expected that
2231 the marketings of cattle and calves from these 3 States during the 5 years, 1936 to 1940, will total more than for the 5 years, 1929 to 1933, but will be considerably smaller than they would have been if the sharp decrease in numbers had not taken place in 1934.

Since Colorado is the principal source of supply of cattle and calves at Denver, a more detailed con-

Trans.

sideration of the relationship of numbers, total marketings and marketings at Denver may be desirable. Table 2 shows this information for two 5 year periods (1924 to 1928) and 1929 to 1933 and for 1934 and 1935. The number of cattle in Colorado January 1, 1934, was the largest for the period and on January 1, 1935, had declined to about the number in 1930, but larger than in 1926, 1927, 1928 or 1929. The average yearly marketings during the first five year period, both total and at Denver, were larger than for the second period. The percentages that Denver receipts of cattle and calves were of total marketings fluctuated from year to year, but for the two periods, were about the same. Yearly marketings during the second period were a considerably smaller percentage of the average number of cattle on farms January 1 than during the first period. This is accounted for in part by the fact that the second period was one in which numbers were increasing and the first period one when numbers were decreasing; also by the fact that the number of cattle grain finished for market was smaller in the second period than in the first.

2232 The relationship between the number of cattle on feed in Colorado and receipts during the first six months of the year are shown in Table 3. Cattle numbers in Colorado may be expected to increase during the next five years, 1935 to 1939. Marketings at the beginning of this period (1935 and 1936) may be small as restocking takes place, but for the period as a whole, there seems no reason to expect them to average smaller than for the five years, 1929 to 1933. If the volume of cattle feeding in Colorado tends to increase from the comparatively low volume of recent years (1931 to 1934), marketings may average higher than during the five years 1929 to 1933. Whether such

Trans.

increase occurs or not will depend largely upon feed conditions in Northern Colorado, and grain production in the State and somewhat on financial conditions. At the present time, conditions point to a considerable increase in cattle feeding in 1936.

If feed conditions in Colorado and the Northern Great Plains areas are favorable during the next few years, there is likely to be a rather heavy movement of stock cattle into the sections where cattle numbers were greatly reduced in 1934 as a result of the drouth and the relief programs. In the past many of such cattle have come from Texas through the Denver Stockyards and a rather heavy Spring movement of Texas cattle through Denver in 1936 and 1937, such as occurred from 1928 to 1930, might be expected.

HOGS

Sources of hogs at Denver.

Receipts of hogs at the Denver Stockyards have tended to increase rather steadily during the 15 years from 1920 to 1934. The principal States furnishing supplies have been Colorado and Nebraska, with nearly all the balance coming from Wyoming and Kansas. While cyclical changes in hog numbers and hog production in Colorado have been reflected in changing numbers of hogs arriving at Denver from Colorado, these cyclical changes in numbers either in Colorado or in the four States have not apparently greatly affected the total supply at Denver.

Supplies from Nebraska and Kansas have tended to increase rather sharply both in numbers and in proportion of the total during the past few years, Table 4. This doubtless reflects the growing use of truck transportation in the marketing of hogs which has made it more convenient for hog pro-

Trans.

ducers in the western parts of these States to ship to the Denver market; also the competitive advantage of the Denver market over the Missouri River markets because of the demand for hogs in California.

Table 5 shows the disposition of hogs received at Denver for the years 1920 to 1934. The decrease in the proportion of the hog supply that was locally slaughtered and the increase in both number and proportion of hogs shipped are marked. Practically all of the hogs shipped go to California packers.

Tables 6 and 7 show figures for Colorado and Nebraska for the years 1924 to 1935, of hogs on farms, total marketings, marketings at Denver and the percentage that Denver marketings are of the total. These tables show that the proportion of total hogs marketed from Colorado that have gone to Denver has tended to decrease in the last seven years, and especially in the last four years. On the other hand, the Denver percentage of the Nebraska total has tended to increase. The decrease in
2234 the Denver proportion of the Colorado total has been due to the increasing movement of Colorado hogs to California through Ogden and North Salt Lake City. The causes of the increasing proportion of the Nebraska total have already been given.

Reduction in hog supply.

Hog numbers have been drastically reduced over the entire country and especially so in the States that furnish supplies to the Denver market and undoubtedly this will result in a sharp reduction in hog receipts at Denver for the balance of 1935 and for the greater part of 1936. Even if feed crop production in the Denver hog territory should be greatly increased this year and should be normal or better in 1936, it is probable that hog production in this area will expand somewhat slower

Trans.

than in the main Corn Belt. Hence to the extent that Denver hog receipts depend upon production in this area, it hardly seems likely that yearly receipts during the five years 1936 to 1940 will average as large as during the years 1929 to 1933. To some extent, however, a further expansion in the area resulting from the California competitive demand might offset the smaller supplies in the present area. It is perhaps significant that for the first four months of 1935 the receipts of Nebraska hogs at Denver have decreased much less compared with the same months in 1934 than have receipts from Nebraska at the Missouri River markets.

SHEEP

Sources of sheep at Denver.

The supply of sheep at the Denver Stockyards comes from a much larger area than do supplies of either cattle or hogs. This situation arises from the fact that a large part of the lambs raised in
2235 the Intermountain and Pacific States move east for slaughter, while few cattle and no hogs from these States go east. The Denver sheep supply comes largely from eight western sheep states, which in the order of their importance are, Colorado, Idaho, Wyoming, New Mexico, Utah, Oregon, California and Texas (based on five years, 1929-1933 average). Table 8. There is a considerabe variation among these States in the period of years when sheep from them are received at Denver.

The Colorado receipts are fairly equally divided between the first and second six months of the year. The supply during the first six months is almost entirely fed lambs and depends to a considerable extent upon the number of lambs that are fed in Colorado, especially the number in Northern Colorado. The relationship between Denver receipts of Colorado sheep and the number of lambs

Trans.

on feed in Colorado is shown in table 9. Receipts from Colorado in the second half of the year are largely of range lambs and sheep, many of them going through to Northern Colorado and Nebraska feedlots. Receipts from California are almost entirely in the first half of the year. Some fed lambs are received during the first half of the year from Idaho and Wyoming but most of the receipts from States other than California and Colorado are of range lambs in the second half of the year. Table 10 shows the distribution of total receipts of sheep at Denver by months from 1929 to 1934. For the five years, 1929 to 1933, the percentage distribution was 35 per cent in the first six months and 65 per cent in the second. These percentages indicate in a general way the extent to which Denver receipts depend upon feeding activities and upon range production and marketings.

2236 Table 11 shows the estimated number of stock sheep and breeding ewes on farms in the eight western sheep States in the Denver market area, the estimated lamb crop, the percentage lamb crop, the marketings at Denver and the total at ten markets for these States for the years 1924 to 1934. These totals at ten markets are not comparable over the whole period, since they do not include Salt Lake City, Los Angeles or San Francisco in 1924, Los Angeles and San Francisco in 1925, or San Francisco in 1926. Hence the proportion of the Denver marketings to the total in these years is exaggerated. Beginning with 1927 there was an upward trend in the Denver percentage of the total, especially marked from 1932 to 1934. The reason for this increase in last three years is probably to be found in the advantageous position occupied by the Denver market as against the markets to the eastward, with respect to transportation privileges.

Trans.

It is to be noted with regard to this table 11 that the receipts at ten markets or at all markets are not dependable indications of total marketings, either by States or for the eight western sheep States as a whole. There is a very large movement of feeder lambs from some of these States that never show up at any market as originating from these States, but are credited to the States where fed. There is also a large element of duplication between markets. For example, the total reported receipts of California sheep at these ten markets is grossly exaggerated due to the fact that many of the same lambs are counted two or three times. In 1934 the reported receipts from California at eight of these markets (excluding Los
2237 Angeles and San Francisco from the ten) had a total of 764,000 head from California, which is 50 per cent larger than the number of sheep shipped out of the State according to railroad billings.

2238 The number of stock sheep and breeding ewes on January 1 in these 8 States increased markedly from 1924 to 1931, changed little from 1932 to 1934, but declined in 1935. The number of breeding ewes on January 1, 1935, of 18,446,000 was about the same as in 1930, below the 5-year average, 1929 to 1933, but much above the 5-year average, 1924 to 1928. The lamb crop in these States, however, is not entirely determined by the number of breeding ewes, since the number of lambs docked per 100 ewes (the percentage lamb crop) is also a factor of importance. The variation in this percentage for the years 1924 to 1934 is shown in table 11. It will be noted that this percentage lamb crop has tended downward since about 1928. This has been a result partly of the low prices of lambs and wool and the difficult financial situation of many producers since 1930; partly because of the increasing proportion of Texas

Trans.

ewes in the total since the lamb crop in that State is always relatively low; partly to a succession of years of sub-normal rainfall and resulting poor range and feed conditions; partly to the increasing proportion of old ewes in flocks. The variation from year to year around the trend has been caused largely by weather conditions during lambing and during the preceding winter.

The 1935 lamb crop in these 8 States will doubtless be smaller than the 1934 crop and below the 1929-1933 average. This smaller crop will result from a reduced number of ewes as there is little likelihood of the percentage lamb crop exceeding that of 1934 enough to offset the decrease in ewes.

2239 If feed conditions continue to improve in 1935, and if, during the next few years, range conditions should be fairly similar to those between 1924 and 1928, there is every reason to expect the percentage of lamb crop during the five years, 1936 to 1940, to average higher than from 1929 to 1933. Under such feed conditions, there will also be a tendency to increase breeding ewes so that the average lamb crop over the next 5 years, 1935 to 1939, would be larger than during the past 5 years, in spite of a small crop in 1935.

To the extent that probabilities favor a series of feed years from 1935 to 1939 better than from 1929 to 1934, the average number of lambs raised in these 8 States in the latter period can be expected to be as large as or larger than in the earlier. Changes in the size of the lamb crop will tend to affect Denver receipts during the second half of the year. Changes in the first half of the year will depend largely upon the number of lambs fed in Colorado and nearby areas. There is no reason to believe that this number will average smaller

Trans.

during the next 5 years than during the last five, and if feed production is more normal than during the past five years, it may average higher.

The preponderance of evidence as to business and industrial conditions during the next five years is that they will average higher than during the last five. This will result in lamb and wool prices higher on the average from 1936 to 1940 than from 1930 to 1934. Higher prices and an improved financial situation will bring better care of flocks and tend to raise the percentage lamb crop.

2240 A large part of the old ewes in these States were eliminated from flocks in 1934 through the drouth relief purchases so that at the present time the average age of ewes in these States is probably smaller than for some years. This also should tend to increase the percentage lamb crop.

Hence it is concluded that lamb supplies in the 8 States that furnish practically all of the Denver receipts will be smaller in 1935 than in 1934, and below the 5 years, 1929 to 1933, average. For the 5 years, 1936 to 1940, however, there is little reason to believe that the average will be below the 1929 to 1933 average and it may be above.

The witness then presented for the record, fifteen separate tabulations showing respectively numbers of the different species on farms, numbers marketed, etc. No objection predicated on these tables is relied upon. Hence they are omitted from the abstract, but it is stipulated and agreed between the parties that either party may refer to these tables in oral argument and briefs should it become necessary, such tables being on file in the office of the clerk of this court.

2254- That completes my testimony. I have nothing
A further to say with regard to this situation.

Trans.

I have been furnished with a copy of Mr. Pexton's testimony and have gone over that testimony and am prepared to make some comments with regard to certain parts thereof.

At the bottom of page 1508 it states that "These trends, we believe, are the cause of the decrease in Denver cattle receipts during the past five years in the face of an increased supply. Colorado shipments to the Denver market have decreased from 438,000 head in 1929 to 299,000 head in 1933, a decrease at Denver of 139,000 head, or 32 per cent in
2255 the face of an increased supply." This statement seems to give the impression that the receipts of cattle at Denver during the past five years were due to the fact that cattle from Colorado were going elsewhere rather than to Denver. As a matter of fact total marketings from Colorado have also decreased and receipts at other markets, at markets other than Denver have decreased to a greater extent than receipts of Colorado cattle at Denver. The reason of this decrease in Colorado cattle marketings, and this applies to marketings from these other States, has been the fact that over this period of 5 years from 1928 to 1933 cattle numbers were increasing quite rapidly in these States and this increase was due to the fact that marketings were low. That is, cattle instead of being marketed were being held back on ranches to increase numbers until numbers reached a very high point at the beginning of 1934 and then, as a result of heavy commercial movement and the Government purchases in 1934, practically all of this increase that had taken place between 1928 and 1934 was wiped out in one year and cattle numbers on January 1, 1935, were back to about what they were at the beginning of 1928 or 1929.

Government purchases of cattle wiped out 5 year excess in one year.

Trans.

On page 1512 at the top of the page and following the question "Q. Mr. Pexton, in your opinion, what are the prospects for marketable livestock during the next five years at Denver?" "A. In my
2256 opinion the prospects are that the average supply of livestock coming to the market will be greatly reduced." (Continuing)—to the extent that that judgment is based upon the number of livestock in the area from which Denver draws its supplies, I do not think that it represents what the situation will be over the next 5 years except possibly in the case of hogs.

I think that the production of lambs during the next 5 years in the 8 States from which Denver draws its supplies is apt to be just as large on the average as it was during the preceding 5 years and I think that marketings of cattle from these states may also be as large as the average of the past 5 years or even larger. That is leaving out 1934.

On page 1514 down about the middle of the page, this is referring to the Government cattle purchase program, it has the number of producers who sold cattle to the Government in total 696,679. I might state now this is not particularly material except that those figures that have been issued by the cattle buying office do not represent farms selling. There is a mixture of farm selling and total sales, that is, a great many producers sold more than one time, and in tabulating these figures in some of the States they included all of the sales and in other States they included the farm selling, so this does not represent the actual number of farms that sold.

2257 And then at the bottom of the page, page 1514, it says, the second column says, a total of 25,253,425 cattle owned by these producers. (Continuing). Now, that is a figure that does not re-

Trans.

present the number of cattle that were on farms that were sold. When these sales were made each person selling gave an inventory of the cattle remaining on their farms, but in a great many cases these inventories were furnished after each sale so that for the same farm or ranch there might have been two or three or four different inventories included, which tended to exaggerate the number that were on these farms that sold. At the present time my office in Washington is tabulating all of these inventory records from these cattle sales in which we are trying to eliminate this element of duplication by taking only one inventory for the same farm or ranch that sold a number of times, and it is going to show a substantially smaller number of cattle on these farms and ranches that sold than these figures that have been currently published now.

On page 1520 it states at the paragraph at the bottom of the page: "The Government estimates that 80% of its purchases in the west were female cattle. It purchased in Colorado 289,000 cattle. 80% of this number is 231,000. Therefore, the number of female producing cattle on hand in Colorado on January 1, 1935, may be considered as being 951,000 less 231,000, or 720,000 head." (Continuing). Now, that statement of 80% of purchases being female cattle is used here and applied to the total purchases of cattle and calves. Now, from our tabulations to date about 23% of the total purchases of cattle and calves were calves, so that the total purchases of cattle one year and over would only run about 75 per cent. As a matter of fact
2258 I have the exact figures for Colorado, which show that the total purchases of cattle were 289,000. Of these purchases 61,000 were calves, which leaves cattle one year old and over of 228,000. Of the cattle one year and over, 186,000 were cattle two

Trans.

years old and over, leaving about 42,000 as yearlings. We have not yet made a segregation of these purchases of Colorado cattle by sex and age, but we have in a number of States and on the basis of the percentages of cattle two years old and over in these other States that were cows and heifers, I would figure that the number of cows and heifers two years old and over bought in Colorado would run between 175,000 and 180,000 head. Of course, that being the case, then, the computations following in the other page in which it was figured that there was a decrease of 231,000 head of cows in Colorado
2259 would necessarily be erroneous. These figures that I have just given you as to the purchases from Colorado are obtained from the auditor's office of the A. A. A. here in Denver, and those are taken from the vouchers which showed the kind—the ages of the cattle purchased, so presumably they are correct to the extent that the vouchers themselves are correct. The figures making a separation between two-year-olds, yearlings and calves are now available for Denver. This other separation that we have been trying to make in Washington, I am not sure for Colorado whether we will show this separation as between cows, steers, and bulls. We have done that for a number of States, but we may in these remaining States take a sample out of each State, say, a number of counties in different sections of the State and find out what that separation was in that sample. I might say, though, that for the States that we have already tabulated, those percentages run quite close.

On page 1521, at the top, it states: "On February 15, 1934, the Government estimated the Colorado cattle population as of January 1, 1934, to be 1,650,000 head. A year later they apparently found this to be wrong and raised the estimate as of that
2260 date to 1,713,000, an increase of 63,000, which, in a

Trans.

measure, explains the difference in our figures." I might say in regard to that that the estimates that we put out for the current year are tentative estimates always subject to revision in the following year, and that in the case of Colorado the reason for that revision was very largely the records that we obtained from the State showing the number of cattle returned to taxation, that is, we usually revised our estimates of numbers, January 1, in line with the change shown by the number returned for taxation. Of course, our estimates are much above the numbers returned for taxation, but we find that the changes, the relative change in the number returned for taxation, is one of the best guides that we have for the change in the total.

Another point with regard to these cattle purchases in Colorado as affecting the probable receipts of cattle at Denver from Colorado is that the big part of these purchases in Colorado were made in the southeastern and eastern parts of the State, areas that normally do not ship cattle to the Denver market. That especially applies to the southeastern part of the State. I have here a table made up from the records of purchases which show by counties the number of head purchased in the different counties with sub-totals, showing the number by Crop Reporting Districts. Now, in District 9, which includes the southeastern part of the State, the total was 113,670 head out of a total of 289,000 for the State. District 6, which is the east central part of the State, the total was 89,207 head, the total in these two Districts being 195,877 head out of a total of 289,499 head. In the areas in the State which normally ship to Denver, the Government purchases were relatively much smaller than in this other area, and in a good many cases apparently they represented a selling of cattle to the Government that normally would have

Trans.

come to market except for the fact that the Government price was higher than the market price at that time and were not strictly drouth relief cattle. I can furnish you with this table. This table was prepared by Mr. Beier, who is a regional livestock statistician for our division and is also assistant to Mr. Petrie in the Denver Cattle and Sheep Buying Office. This was made up from the records in the auditor's office in Denver. I believe this to be correct.

Q. I would like to offer this, and it is a question of convenience whether we would have this copied into the record or have others made up for you.

MR. BOSWORTH: It doesn't make any difference to me.

MR. MILES: (Continuing) Well, then, I suggest that you read this into the record.

2262 COLORADO

Dist.
1

Counties	Total Cattle Purchased.
Chaffee	2,260
Clear Creek	....
Eagle	1,141
Gilpin	....
Grand	358
Gunnison	1,831
Jackson	3,327
Lake	....
Moffat	6,154
Park	1,006
Pitkin	199
Rio Blanco	2,330
Routt	2,627
Summit	30
Teller	1,141
17	22,404

	Trans. Dist.		
	2		
		Boulder	451
		Jefferson	179
		Larimer	915
		Logan	2,417
		Morgan	5,183
		Sedgwick	560
		Weld	6,366
		22	16,071
2263			
	6		
		Adams	3,311
		Arapahoe	3,311
		Cheyenne	9,962
		Denver	....
		Douglas	2,707
		Elbert	9,362
		El Paso	10,640
		Kiowa	8,327
		Kit Carson	13,622
		Lincoln	11,284
		Phillips	515
		Washington	9,375
		Yuma	6,791
		23	89,207
	7		
		Archuleta	1,597
		Delta	5,476
		Dolores	1,248
		Garfield	4,273
		Hinsdale	125
		La Plata	6,605
		Mesa	5,247
		Montezuma	4,312
		Montrose	3,564
		Ouray	768
2264		San Juan	....
		San Miguel	654
		12	33,869

Trans.

8		
	Alamosa	2,336
	Conejos	2,736
	Costilla	609
	Mineral	179
	Rio Grande	2,495
	Saguache	5,930
	6	14,285
9		
	Baca	19,756
	Bent	14,024
	Custer	2,953
	Crowley	5,510
	Fremont	4,058
	Huerfano	6,767
	Las Animas	22,176
	Otero	11,861
	Prowers	15,873
	Pueblo	10,685
	17	113,670
State	100	289,499

2265 On page 1524, it states: "The Government Program is against expansion in several ways. Livestock production in the west depends to a great extent on range conditions and the numbers allowed by the Government on forest reserves and the public domain. Forest reserves have been dry along with the rest of the country and any change will be a reduction in numbers allowed to graze, rather than an increase. The public domain heretofore has not been under Government regulation and has been seriously over-grazed. It is now being regulated under the Taylor Bill. We may expect a curtailment of the numbers allowed on these lands under regulation intended to restore good grazing conditions compared to the old basis of everyone grazing when and where they wished." I do not agree with that as far as it applies to the Taylor Grazing Bill providing for the establishment of grazing districts or leasing of the public domain. My judg-

Trans.

ment is that the control of the public domain under the Taylor Act will make possible an increased production of livestock rather than a decreased production in that where land is leased to adjoining holders, it will make possible the development of water, and fencing of the range, the dividing of the range into pastures which will tend to increase the carrying capacity above what it is at the present time, so that I think that over the period of the next five years, that this range regulation, as far as the Taylor Act is concerned, will probably tend to an increase rather than a decrease in production, especially in the matter of cattle.

2266 On page 1526 it says: "By the same method of calculation as employed before, prospective decreases from New Mexico, Texas and Wyoming to the Denver market figure as follows:" I think that that, of course, is subject to the same error that was involved in the Denver computation or the Colorado computation, since it is based on the same method and the same assumption as to number of female cattle.

On page 1532 it states: "It might be argued that even with a shortage, Colorado feed lots could secure a normal supply by paying sufficiently high prices, however, lamb feeding has not been profitable in Colorado over a period of several years and, unless prices are attractive, Colorado feeders will not purchase and take the risk of having losses. In other words, the purchases of Colorado feeders would be materially higher if feeder lambs were only 5 cents per pound than if they were 8 or 10 cents, as they are likely to be with a shortage of supply."

That is apparently forecasting a price of 8 or 10 cents a pound for feeder lambs to go into Colorado this year, which I think is much too high an esti-

Trans.

mated price. As a matter of fact, lambs have already been contracted to go into Colorado at 6 cents per pound, and there is apparently no great effort to contract lambs at the present time at a price above 6 cents a pound. The trend of lamb prices during the last half of the year is very largely determined by the prevailing level of prices during July and August, and there is nothing in the present price of lambs that would seem to forecast feeding lambs at anything like 8 or 10 cents a pound this year.

2267 There is one other reference made to these Government cattle on page 1800. It states: "For example, an actual count was made at San Francisco to which point we shipped several hundred cars of cattle. As I recall, the actual count there showed 85 per cent females."

The shipments of cattle from Colorado to California practically included no calves, so that all of the cattle that went to California were cattle one year old and over, so that that proportion couldn't apply to the total Government purchases, but I have no doubt that of the total that that was possibly a fair sample of the cows that were in the shipments that went from here to California.

I think that is all.

Cross-examination.

With reference to my comment on Mr. Pexton's testimony which appears at page 1800 of the record, I stated that that total could not apply to the total Government purchases because the cattle out there, that were sent out to California, were one year and older. I stated that the reason it didn't apply and couldn't apply to the total was because there were calves in that total.

Trans.

Q. Well, now, do you know what percentage of these cattle were female? As I understood your testimony, the Government kept no track of that total?

2268 A. No, but this states that 85 per cent of these particular shipments to California were cows.

Q. Yes.

A. Giving the implication that 85 per cent of the total Government purchases were cows, which is the figure of 80 per cent that is used in computing the reduction in the number of cows in Colorado. That is, I think this 85 per cent here is simply supporting this other figure of 80 per cent used in reaching the number of cows purchased in Colorado.

Q. Well, coming to the figure of the number of cows purchased in Colorado, I understand the Government made no check whatever of the female or the heifer calves?

No check on number of cows and heifers purchased by Govt.

A. No.

Q. So that you do not know and your Department does not know what percentage of female calves there were purchased?

A. No, sir.

(Witness continuing). The Government did, however, keep track of the sex of the yearlings it purchased. However, the Denver figures showing the sex of cattle bought from Colorado are not available; that is, showing this separation of two-year-olds and yearlings into sex groups.

I stated that of the 289,000 cattle purchased in Colorado, 228,000 were one year and older, and of that 228,000, 186,000 were two years old and older,

Trans.

2269 and that based on percentages in other States, you would say that between 175,000 and 180,000 were cows. In other words, my estimate is not made from figures available with reference to Denver but upon the percentage as our Department worked it out in other States.

Now, as to the yearlings, the percentage of females and yearlings in other States was about the same as it was in two-year-olds. With regard to calves, nobody knows what the distribution was
2270 as between male and female. My opinion is that in a great many cases that the number was about fifty-fifty male and female; that is, the States like North Dakota, Minnesota, most of South Dakota, and Wisconsin, where a large part of the cattle bought were from small farm herds and largely dairy herds, that they sold all the calves that they had and the normal distribution would be fifty-fifty as between males and females. I have nothing on which to base a judgment as to what that separation would be in the beef cattle areas, as to whether there would be more tendency to sell the heifer calves than steer calves.

As far as my own sales and my own ranch is concerned, we sold no calves except perhaps five or six head, and they were culls, that is, the calves who could not be weaned from the cows at the time the cows were sold. But my observation does not go to all the Wyoming, Colorado and New Mexico area as to the percentage of heifer calves and I would not care to express an opinion upon it.

We have no information in our Department nor have I gained any information from my observa-
2271 tion that would lead me to believe that in the beef area the percentage was different than that indicated for one-year-olds and over. My own judgment would be that in the calves bought there would

Trans.

be a larger proportion of males than there would be in the yearlings and two-year-olds, because a great many ranches tend to sell all of their calves and keep their breeding heifers and cows, so where all the calves were sold, they would tend to run fifty-fifty males and females. That from my experience is about the normal proportion between males and females in a producing herd.

When a heifer calf comes into production depends something upon the range practice that is followed and that differs somewhat in different States. In Texas, for example, where all the cattle are run under fence and in pastures, the general practice is not to breed their heifers until they are coming two-year-olds because they can control the breed-
2272 ing. In areas where the cattle run on the open range or on the forest, and the herd all runs together, why a considerable proportion of the heifers will have calves as two-year-olds, so that you can't make a general statement.

As a rule, before an animal produces a calf it must be what is known as a long yearling or a two-year-old, and in some places they are practically three-year-olds before they start producing calves, so that a heifer calf produced, say, in 1935, would not normally start producing calves until pretty nearly 1937 at the earliest, and naturally when the female has been slaughtered, it is not going to produce any calves.

Leaving out the possibility of importing cattle from other areas it necessarily follows that due to the Government slaughter which, as I have indicated from percentages in other States, runs around 90 or 94% on two-year-olds, it is going to take some one year to two years to make up that decrease.

Trans.

2273 Of course, you always have considerable marketing of calves from these States, which includes heifer calves, so that it is a question then of how many more were taken out of the herds in these States as a result of the drouth, by Government purchases last year than would normally have been taken out.

Large slaughter of female animals.

2274 We have records furnished by slaughterers all over the country reporting monthly showing the distribution of their slaughter as among cows and heifers, steers and bulls and on the basis of those percentages reported the Department makes an estimate of the distribution of Federally inspected slaughter each month as among cows and heifers, steers and bulls, and calf slaughter is reported separately, and I admit that there was an unusual and a very large slaughter of female animals due to the Government's program during the year 1934.

Decreased marketings due to low price.

(Witness continuing). As I stated, the average number of cattle on farms on January 1, 1935, in these three States of Colorado, Wyoming and New Mexico, is practically the same as it was in 1928, so that during the period from 1928 to 1933 marketings of cattle from these three States were relatively small, due to the fact that cattle numbers were increasing rapidly. A part of that big increase in cattle numbers during that period was due to the fact that prices of cows were so low that they would hardly pay their freight to market and cows that normally would have been marketed during this period were not marketed for that reason, so that marketings during this five-year period were relatively low and numbers increased rather rapidly during the coming five-year period. I can see no reason why your marketings over the five-year period won't average as large or larger than they were during this other five-year period unless we should run into the same situation that we have in

Trans.

the last two or three years where cows won't pay their marketing cost and will be held back on ranches and farms and go to increase numbers. What happened was that there was this big accumulation of these cattle back on these ranches be-
2276 cause of the price situation, and then the drought came along in 1934 and the Government purchases and the regular slaughter practically wiped out all of this accumulation in one year. There is no experience in any other years that would show that same shift from the peak of the cattle cycle as we were at the beginning of 1934 down almost to the bottom of the cycle as we were at the beginning of 1935. If it had not been for the drought and the Government purchases undoubtedly cattle marketings during the period of 1934 to 1939 and 1940 would have been much larger than they were during the period from 1928 to 1933.

The cattle numbers in these states had reached the point where it would have been impossible for them to increase them by simply holding them off the market.

I am not making any estimate as to the number of cattle that may come to Denver during this period because there are a great many things that can happen that will change the proportion of cattle going to one market or to another. All I am trying to do is to reach a conclusion as to about what the production of cattle will be in this area from which Denver draws its supply but not expressing any opinion as to what proportion of that supply may
2277 go to Denver.

I will admit that my estimates may be thrown completely out of line by, for instance, weather, prices or feeding conditions, including the cost of feed, by range conditions and by financial and
2278 economic conditions. However, based on the law

Trans.

of averages and the trend of weather conditions in these range States over periods of years I would rather favor an opinion that range and feed conditions will be much better during the next five years than they have during the past five years.

In "Miscellaneous Bulletin 215" it is stated: "Of the total number of cattle to be finally slaughtered probably 80% will be cows and heifers." That
2280 does not apply to calves. It states above "Of the cattle and calves purchased by the Government and shipped by the end of October, about 23% were calves."

I feel that the 80% figure as used there did not relate to cattle and calves,—solely to cattle. I
2281 think that probably of the number of cattle one year old and over that were bought by the Government, more than 80% of them were cows and heifers.

Now with reference to calling Denver a natural market. It is true that there is the Pueblo gateway, 120 miles to the south, and the Cheyenne gateway, 110 miles to the north and both are on main lines to the Missouri River and that there has been at Pueblo a feed lot almost as long as there has been a feed yard, that is, pen area, at Denver. I called Denver a natural market in that it is located between the area where this livestock is produced and the area in which it is consumed, that is, the natural movement of cattle and sheep raised between the Rocky Mountains or in the Rocky Mountain area and eastward is from west to east or from southwest to northeast, so that this market is in the natural direction in which that livestock is moving to market from Colorado, Wyoming and New Mexico only. It is true that the big consuming centers of the country are Chicago and East, so that the Missouri River markets are be-

tween the producing end of the game and the consuming end of the game while Denver, until the building of the Dotsero Cut-off, was off any main line, but I still call Denver a natural market for a considerable part of Colorado and Wyoming and New Mexico, in that it is much closer than the Missouri River markets, that livestock can be trucked to this market when it could not profitably be trucked to the Missouri River markets. It is true that trucking is a recent development but producers in this area can get their livestock to Denver market and sold and get their returns quicker than they can if they go to the River with it. I
2283 think that they will move sheep through from Laramie to Omaha or the Missouri River without stopping to feed en route. Undoubtedly, though, a train load of lambs leaving Laramie billed for Denver and another billed for Omaha, the one would reach Denver before the other reached Omaha. It must be admitted, however, that they would not arrive in time for any earlier market session because the market opens at 8 o'clock in the morning in both places, so a shipment might come in at Denver at 12 o'clock midnight from Laramie or arrive at Omaha at 4 o'clock in the morning but they would still be on the same day's market at the two places.

Undoubtedly there has been a tendency over the last seven or eight years for an increasing amount of livestock to go direct to packers and not through
2285 the Public markets.

Of course, we make a distinction as a matter of direct marketing as between a movement to public stockyards and a movement that does not go to public stockyards. At the present time, this Grand Island market and the Norfolk and probably several others are posted markets. It is true that live-
stock is not sold in the same way there that it is 1225
at your other public markets, but it is a question

Trans.

whether you will call those public markets or some other kind of a market, but they are posted markets.

Q. Well, have your estimates, then, of increase in your statement taken into account and given full effect to this increased tendency to direct buying and to the effect of auction sales and these other direct movements in your opinion?

A. No, as I stated, my statement was intended to cover the trends of production in this area, without expressing a judgment as to how that production would be distributed.

The transit privilege.

It is true that in my statement I mentioned the fact that Denver was in an advantageous position on account of the transit privilege. Though I do not know it directly, I have been advised that the transit privilege on sheep has been allowed to the Missouri River markets commencing July 15, 1935. Whether or not that will affect in some manner Denver's advantageous position, would be pretty hard to say. I think it would depend something upon the buying situation as it develops in Denver. If these eastern packers can continue to buy lambs
2294 at Denver so that they don't cost them any more laid down in New York, or wherever they go, than they would if they buy them at the River markets, I think they will continue to buy them in Denver the way they have been buying. Even though they do the same thing at the River, and if these shippers from Idaho and Utah and these other States shipping fat lambs either to Denver or the river markets find that they can get just as much for the lambs in Denver as they can get at the river markets, why I think they will continue to ship them to Denver.

Trans.
2295 It is true that under the transit arrangement the producer pays his proportion of the through rate from point of origin to Denver and the purchaser pays the balance of the through rate from Denver to point of destination.

Q. Under that situation how can you say that the producer will get the same price if transit is at the river, at Omaha or Denver, as he will at the other place?

A. I mean, price was not really the word that I meant, I mean net return, that is, if his net returns from his shipment will be about the same from Denver as from the river he would tend to still ship to Denver.

Q. In any event, however, the advantage which Denver now has [illegible] to be removed, will it not?

A. Why, I would say that the way these river markets have been fighting to get this privilege that they figure it is going to make some change in the situation.

(Witness continuing). In my testimony I stated that I had made no forecast whatsoever as to the receipts at the Denver market but merely as to, you might say, the livestock population and how quickly they would come back.

2296 Assuming that the Denver market could maintain throughout the period 1935-1939, inclusive, the same proportion, we will say, of Colorado cattle that were received in the past, my judgment is that after 1935, the marketings in the Denver yard from Colorado will tend to come back toward a normal or an average. In 1936 they may be below the 1929-33 average, but I would think that in 1937, 1938 and 1939 they would be considerably above 1227
that average, so that the average throughout the

Trans.

period will be equal to the 1928-1933 average. In other words, the production of cattle in Colorado for the period 1928 or 1929 to 1933 would justify a much larger or would result in a much larger marketing than actually took place if cattle numbers in Colorado had not increased quite rapidly, that is, that in none of those years did they market their production so that if during the next period there is no such tendency to increase numbers, you would naturally expect that the yearly marketings will exceed those during this period of 1928 to
2297 1933. In my opinion there will be no such tendency because during this next five-year period, I do not think that the prices for certain classes of cattle will be so low that they will not make any return to the producer if they are shipped to the market so that he holds them back on the ranch rather than to ship them.

Talking livestock economics for a moment, I would say that at the present time considerable part of the high price on cattle is due to the very short supply of hogs. The supply of cattle has not been reduced to anything like the supply of hogs, and if the supply of hogs had been normal the last five or six months, the price of cattle would not be near as high as it is today with the supply of cattle today. In other words, a deficit of hog products or beef products leads to an excess demand for beef. There seems to be very little relationship, however, between the supply of hog products and beef and the demand for lambs.

2298 I think much of the situation in cattle between 1929 and 1933, especially from 1931 to 1933, was due to business and financial conditions but not to cattle supply condition. As a matter of fact, the slaughter of cattle in 1933 was the smallest of the five-year period and prices were lowest.

Trans.

What I said with regard to cattle, and my statement that I was not forecasting market receipts, applies also to hogs and sheep.

It is true that the drought, or any condition of that sort, generally results in poor breeding conditions, but I do not think that the drought, as it affects the condition of cattle at breeding time or calving time, will greatly affect the character of the cattle when they are ready to be sold as yearlings or two-year-olds. It would if they were to be sold as calves, probably. However, I do not think that the drought does affect the calf crop in the sense that you would expect it to be smaller than if feeding conditions were better.

2300 If the producers are going to be able to build back their herds, they must hold back more heifer calves and more ewes than they have in the past, although in meeting a shortage of cattle in states like Wyoming and to some extent in Colorado in the past, there has been a tendency to ship in stock cattle to use the available feed. Now there are certain counties and areas in Colorado and Wyoming where cattle numbers were cut down very sharply last year and I would think that in those counties they will tend to ship in stock steers to use the feed, as well as to ship in cows and heifers to replace the ones that were sold.

2301 Take a state like Texas, whether the calves raised in Texas during the next year or two will stay in Texas or will be bought as yearlings and go to Wyoming or South Dakota depends largely upon whether the grower in Texas will pay more than the man in Wyoming and South Dakota will for them. You understand there is always a large number of heifer calves sold as stock calves out of Texas every year. That is regardless of the supply of cattle in Texas. The tendency will be for people

Trans.

who want to get back into the cattle business to pay more for those heifer calves than feeders will pay for them, so that they will be preserved as breeding stock rather than go for feeding cattle.

It is true, as a matter of fact, that Denver as a market has had no shipments from Texas up through Wyoming this year. You would not expect them to. Feed conditions did not get good enough in Wyoming until about three weeks or a month ago so that there was any place in the State for any cattle above what were there at the time. There has been a considerable movement of Texas cattle to Denver every year but it is much smaller the last three or four years than it was back in 1926, 1927 and 1928, and whereas Denver used to get a sizeable movement out of Arizona, practically all of the Arizona cattle will now go West.

(Witness excused).

Mr. John A. Zelinski, a Government witness, was recalled.

Direct Examination.

I have made an investigation into the facts of the so-called Pitkin sale and the facts of the Legge sale and the Legge lots so far as they affected the value of Zone 5.

Pitkin sale. 2302 First, as to the so-called Pitkin sale, I gathered the impression that at the time Mr. Pexton testified in regard to this sale that he did not know who Robert Knox Pitkin was and so I investigated the records further to find the history of the Pitkin transaction and found that Pitkin acquired the property on the same day on which he transferred it to The Denver Union Stock Yard Company. The property was acquired by Pitkin from John and Leonard Walters and Frank X. Aicher. I endeavored to find out if any of these gentlemen were

still in the city, and talked on the 'phone with Mr.
2303 Aicher and he referred me to Mr. Leonard Walters, whom he said was quite familiar with the transfer, much more so than he was himself. I interviewed Mr. Walters and he informed me that himself and brother and Mr. Aicher were in partnership and on the site of this property were running a stockyard and a slaughter house, that at the time they were probably the second largest wholesalers of meat in the City of Denver and had quite a plant. I asked him if he had any idea as to the value of the structures at the time and he stated that he didn't have a very good recollection of them but that they certainly were worth more than $5,000 and probably up to $10,000; that at the time the property was sold he and his partners understood that Pitkin represented the Stock Yard Company (they were informed and he so felt) were anxious to buy them out for the reason that they did not want to have any competitors in the immediate neighborhood, and for that reason they got quite a price for the property and a price that they felt they couldn't have gotten any other way; that, as a matter of further information, he told me that each of the partners drew out $10,000 in cash after the sale and built themselves another packing plant up on the Sand Creek from which they operated up until about eight years ago, I think he said. Now, in view of that statement of Mr. Walters and
2304 the fact that Pitkin transferred the property on the same date to The Denver Union Stock Yard Company and at the same stated consideration in the deed, which was $55,500 in each of the transactions, I was convinced that Pitkin was in fact acting for The Denver Union Stock Yard Company and that this sale for that reason is no different than the sale from Morse as an officer of the Company to the Stock Yard Company.

Trans.

Legge sale.

Now, as to the Legge sale, which was one of the sales in the Cranberry Place Addition quoted by me in connection with the valuation of Zone 5, at the time of compilation of my report, I sent a questionnaire to Mrs. Legge regarding the sale by her to a Frances Skrabec of lots 31 to 33, inclusive, in block 2 of Cranberry Place. Mrs. Legge replied to our questionnaire and stated that those lots sold for $50 per lot, and the form of questionnaire which we used has this sentence on the bottom: "Use the reverse side of this sheet for additional details which you may be able to give." When that questionnaire came back, it had this statement on the back of it: "Have 22 lots in Cranberry Place Addition for sale, 4½ acres opposite Blayney-Murphy packing house on west side of Platte River, will sell very reasonable," and signed Adeline Tynon Legge. Of course, I was not in a position to interview Mrs. Legge at the time I received the reply to this questionnaire and since arriving in Denver I had Mr. Snider of our office call on Mrs. Legge to ascertain what she would take for those lots and for that 4½ acres and I am advised that she would sell the 20 lots in Cranberry Place Addition at $50 a lot, less if for cash, and the five lots on Washington Street, which is the street frontage, for $100 each. The area of those lots is 25x125. The sale of lots 31 to 33, inclusive, is shown in my Exhibit 23. The curbing of the five lots still has $350 which is not paid that she is paying for at so much a year, also pays a Moffat Tunnel tax of 50 cents a year on each lot. The 4½ acres to which she makes reference in this questionnaire, she is willing to sell for $250 per acre and in my opinion that land is the same type of land as the so-called Averich sales and I think far superior

1232 even to the Local Beef & Mutton tract.

Cross Examination.

I do not know anything about Mrs. Legge's financial condition. Mr. Snider informed me that Mrs. Legge stated that she did not have the property listed with any real estate firm, because I instructed him to make inquiry if it was listed, and in view of the fact that it is not listed, I would assume that she cannot be in very great distress.
306 I have appraised the land of the Stock Yard Company insofar as I was able to do so on the basis of adjoining and adjacent land and that is what I mean by my statement in the letter of transmittal that I have appraised the land in accordance with the Minnesota rate case. That is my interpretation of the Minnesota rate case.

MR. MILES: I just want to make one statement. I have been informed by the field representative of the Department that from the beginning of the field studies, the stockyard officials have extended every courtesy to the Government employees and supplied all possible information. During the trial of this case the learned counsel for the Respondent has extended to the Government employees every courtesy and consideration. In my opinion, no information has been withheld that was pertinent to this inquiry either by the counselor or by any of the respondent's representatives. This
07 attitude has made this one of the most agreeable hearings in our history. In my opinion the case has been fully and fairly presented by the Respondent without friction. For this attitude I want to express my heartfelt appreciation.

Government's case closed.

MR. BOSWORTH: I would like to have it appear on the record that we appreciate the state- 1233

Trans.

ment made. It has been our intention to have this as pleasant a hearing as possible without any undue friction. We may have our differences of opinion, but that is to be understood and expected.

Now, may I ask on the record, Mr. Examiner, with regard to further proceedings, I am hopeful that the Department will, to a certain extent, follow the procedure of the Interstate Commerce Commission. Whether or not that is necessary to do or not is a question under the Packers and Stockyards Act, and perhaps get out a tentative report, for the reason that it serves the very helpful purpose of narrowing the issues when it comes to the oral argument before the Secretary. If no such tentative report is to be made, I would like to be advised sufficiently in advance to prepare for oral argument. I do not believe it serves any useful purpose to prepare and file a brief before the Secretary, but will do so if the Department desires it. I do not wish to foreclose, of course, myself from any rights which, should I differ with the decision of the Secretary, might have an effect upon the appeal to the court. In other words, frankly what it means, that I find nothing in the Packers and Stockyards Act or regulations issued there-
2308 under which require the filing, the preparation and filing of a brief prior to oral argument.

MR. MILES: That is correct, sir.

MR. BOSWORTH: At the same time I am anxious, as we have been here anxious to have the case fully presented to the Secretary in as cogent and logical manner as possible and as briefly as possible. For that reason it is my earnest expression of desire that a tentative report be prepared.
1234 There may be a great many things on which we

Trans.

will agree, whereas if there isn't a tentative report, one feels he has to run the whole gamut of the entire case, which is here some twenty-two or twenty-four hundred pages of testimony, and it makes a difficult thing to do.

THE EXAMINER: Well, the Department, not the Examiner, passes on that, Mr. Bosworth, and you will be advised. According to the records of the Examiner all of the exhibits offered on either side have been received and I think that is correct. If there should be any inadvertency in the record in that respect, they are now received, all that have been offered on either side.

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[fol. 1236] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Tendered December 10, 1937

Pursuant to the request of the Court, we herewith tender certain findings of fact which we request the Court to enter in this case. The references are to the pages of the abstract of evidence where the facts stated are substantiated by the evidence of record.

The findings we request are as follows:

Used and Useful Land and Structures: Plaintiff owns 130.570 acres of land. The Secretary found that 83.791 acres of such land is used and useful in the rendition of stockyards services and that 46.779 acres thereof is not used and useful. All structures located on land deemed not used and useful were likewise held to be not used and useful structures. The value of the 46.779 acres of land together with the value of all structures located thereon, was excluded from the rate base. A summary description of the land excluded, follows:

[fol. 1237] Stock show property	2.633 Acres.
Railroad and loading facilities	8.985 "
Vacant land	35.161 "
Total	46.779 Acres.

Railroad and Loading Facilities: The 8.985 acres of land, denominated "railroad and loading facilities" in the above table, lie wholly within the stockyard area [1] and are used by plaintiff for the location of its spur tracks, also owned by it, and includes the land upon which are the loading and unloading docks, the chutes and chute pens and one-half of the alleys adjacent to the docks, all of which land and facilities are owned by plaintiff. These facilities are indispensable to the handling of livestock in commerce.[2]

The plaintiff neither owns nor operates any locomotives or rolling stock.[3] The use of plaintiff's spur on industry tracks is effected for all carriers entering Denver under joint-use contracts between the carriers and the plaintiff.[4]

[1] Abs. pp. 25, 32, 491.

[2] Abs. pp. 11, 21, 48.

[3] Abs. p. 10.

[4] Abs. pp. 10, 781.

The carriers do not have any contracts for the use of the plaintiff's docks, chutes, pens and adjacent alleys. The carriers pay the plaintiff a charge for unloading and loading livestock from and into cars spotted by the carriers on the spur tracks of plaintiff adjacent to the docks. The loading and unloading charge is absorbed by the carriers only when the local rate is paid to or from Denver[5] or when the shipment only stops to comply with the 36 hour law. In all other cases these charges are collected by the carrier from the shipper. All money paid by the carriers to plaintiff for the use of the spur tracks and for loading and unloading service was excluded by the Secretary from plaintiff's net income for rate-making purposes.

[fol. 1238] Stock Show Property: The plaintiff owns the land and buildings on and in which the annual livestock show is held. These buildings are leased for three weeks in each year to the National Western Stock Show Association, a non-profit Colorado corporation which operates the annual livestock show. The expenses of the show, which continues for eight days, are borne by admission fees to the show, admission fees to such other events as may be held during the year, and in some measure by public subscription. Plaintiff assumes the carrying charges, such as interest, taxes and the like, and when the show is unable to pay the rental, plaintiff absorbs the deficit. Large quantities of livestock are entered in the show, and much of it is held, exhibited, shown and sold in the so-called stock show property. Large quantities of livestock also entered in the show are sold in the main portion of plaintiff's yards.[6] The stock show attracts buyers to the stockyards from all parts of the United States and results in a wider outlet for the producer's livestock at all times of the year.[7] It is responsible for a substantial volume of receipts during the stock show period, has contributed to the improvement of the grade of livestock raised, results in better prices, has educational value, is an excellent advertising medium for the Denver market, and is maintained by plaintiff in good faith and in the belief that it aids and stimulates its busi-

[5]Abs. pp. 620, 622.

[6]Abs. pp. 49, 50, 294, 438, 439, 444, 450.

[7]Abs. pp. 49, 50, 51, 293, 407, 408, 441, 644.

ness and the business of the livestock producer.[8] The Secre-
"Show Beneficial to Producers & Industry", index p. IV.
tary excluded from the income account of plaintiff only the income received from the stock show buildings proper, and excluded from plaintiff's expense account the taxes and maintenance paid by it.

[fol. 1239] The Secretary did not allocate to the stock show and exclude from plaintiff's income account any portion of the substantial income from yardage and feed shown by the evidence to be directly attributable to the stock show.[9]

Valuation of Used and Useful Land: The Secretary found that the total value of plaintiff's used and useful land is $536,825.00. This does not include any value attributable to the 46.779 acres excluded by the Secretary from the rate base. The values testified to by the witness for the Secretary of Agriculture and by the witnesses for the plaintiff, and the values as found by the Secretary are as follows:

	Value per Acre		
Zone	Government Witness	Plaintiff's Witnesses	Secretary's Order
1	$8,500	$17,250*	$8,500
2	5,000	15,000	5,000
3	3,500	8,000	3,500
4	2,500	11,700*	2,500
5	2,000	3,500	2,000
6	4,000	10,000	4,000
7	3,000	4,500	3,000
8	6,000	10,000	6,000
9	15,246	20,000	15,246
10	1,500	2,500	1,500

*Figures are approximations because lands in these zones were valued in tracts at varying values.

There is involved the usual conflict in the testimony of the land appraisers presented. The plaintiff's appraisers were men of more than twenty-five years experience in the assembling, appraisal and sale of Denver property.[10] The

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[8]Abs. See index references in abstract under heading

[9]Abs. pp. 196, 608, 609.

[10]Abs. pp. 305, 306, 354, 355, 356, 357, 381-383.

government witness, though a man of wide experience,[11] had never appraised or valued any land in Denver or its vicinity.[12]

[fol. 1240] Per Cent Condition: The Secretary found that plaintiff's used and useful structures and equipment are in 80.545 per cent as good as new condition. This finding was based upon the evidence of the government engineer, who testified that that figure represented the condition per cent of plaintiff's property at the valuation date. Plaintiff's engineer testified that the property was in 88.9 per cent as good as new condition. Both engineers arrived at their estimates by the inspection of plaintiff's property. A substantial portion of the plaintiff's property consists of underground structures, such as sewer and water systems, the underground portions of posts and concrete pavements, which the government engineer was unable to inspect.[13] Plaintiff's engineer had viewed these underground structures during the course of their construction and repair over a period of a number of years and was in a position to know their condition, from actual inspection.[14]

Going Concern Value: The Secretary made no separate allowance in the rate base for going concern value. It is admitted that plaintiff has a long history of efficient and economic management; that it has been financially successful, has never defaulted on its bond interest payments, and has paid its dividends regularly. The Secretary found that adequate allowance had been made for the element of going concern value present in plaintiff's business. This allowance, he found, was made in the valuation of plaintiff's structures on the basis of reproduction new cost less depreciation and in the method of valuing plaintiff's land. The record discloses that the government witness, whose values were adopted by the Secretary, valued plaintiff's [fol. 1241] land, not as a stockyard[15] but as land stripped of all surface and subsurface structures,[16] and decreased

[11]Abs. pp. 78, 79.

[12]Abs. pp. 117, 137.

[13]Abs. p. 138.

[14]Abs. pp. 668, 670, 671. See also Examiner's proposed findings, Exhibit A, par. 121, p. 74.

[15]Abs. pp. 115, 132.

[16]Abs. pp. 83, 103, 133.

the value which he otherwise would have found because when so stripped, there was a lack of dedicated streets and alleys in the resulting large vacant tract [17] and because packing houses are in the vicinity.[18] The structural property was valued on the basis of unit costs, that is to say, on the basis of the delivered cost per thousand brick, per thousand board feet of lumber, etc.[19] with construction overheads added to the total unit costs thus found. The Secretary then depreciated the grand total thus derived 19.455% in conformity with the 80.545% condition of structural property found by him. The government presented no other evidence of going value. Plaintiff presented evidence of the expenditures of approximately $325,000 in donations of money, land, buildings and machinery to increase the market outlet.[20]

It is admitted that a market of wide distributive power does now exist at plaintiff's stock yard.

Surtax on Undistributed Profits: The record discloses without contradiction that plaintiff is required to set aside, in a sinking fund for bond retirement purposes, the sum of $30,000 annually. Upon this fund plaintiff paid an undistributed profits tax for 1936 in the amount of $1,078. The Secretary excluded that item from plaintiff's allowable expenses and made no allowance for undistributed profits taxes.

[fol. 1242] Allowance for Interest on Land During Construction: The Secretary, as previously mentioned, allowed in his computation of elements of property properly constituting the rate base, interest on land during construction on the basis of a one-year construction period, allowing interest for said period at the rate of seven per cent (7%). That figure amounted to $37,578.00 which the Secretary depreciated to 80.545 per cent or $30,267.00 (Order par. 138). There was no evidence in the record that this item was subject to depreciation.

The Charge to Yard Traders: The order of the Secretary requires plaintiff to levy and collect from yard traders, a

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[17] Abs. pp. 97, 103, 115.

[18] Abs. p. 153.

[19] Abs. pp. 142, 143.

[20] Abs. pp. 454-461, 706.

charge of approximately one-half the full marketing charge, as fixed by said order, for like species of livestock "resold or reweighed for purposes of sale". The Secretary grounds this portion of the order upon the thesis that the yard trader receives free service and free use of substantial portions of plaintiff's property which the Secretary concludes is a discriminatory practice. The government introduced no testimony upon the subject. If the finding and conclusion is to be sustained, it must be upon the testimony of plaintiff's witnesses and facts elicited by the government's cross-examination of those witnesses.

The evidence of record establishes that there are four classes of buyers, (a) the packer, who buys only fat animals matured for slaughter; (b) the farmer, who buys feeder type livestock; (c) the order buyer, who buys mostly feed type on orders received from clients but who also buys fat animals on orders from distant packers; and (d) the yard trader, who buys generally for his own account and resells to feeders or fatteners either on this or other markets. It is admitted that no charge is or will be assessed against any [fol. 1243] of the first three classes of buyers.

It is said that the yard trader is in business in the plaintiff's yard. That is a fact but so is the packer and the order buyer. The only evidence of record is that the yard trader's livestock clears the yard and moves out to ultimate destinations more quickly as a general rule than do cattle bought by farmers, and as quickly as those bought by order buyers and packers.[21]

The evidence further establishes that the shipper not only desires but insists upon a market which will absorb his shipments with a minimum of delay.[22] The trader supplies a market when other markets fail.[23] He picks up the slack and is an indispensable adjunct to a ready market.[24] The plaintiff contends that the cost, if any, of this buying outlet is included in the marketing charge assessed against and collected from the producer.[25] Producer wit-

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[21]Abs. pp. 599, 600.

[22]Abs. pp. 293, 398, 409.

[23]Abs. pp. 295, 299, 398.

[24]Abs. pp. 298, 409.

[25]Abs. pp. 399, 405, 410.

nesses testified that they desired this outlet and willingly paid for it in the marketing charge.[26]

The tariffs at the Missouri River markets carry a charge on traders' reweighs of approximately one-half the full yardage charge, but there is no evidence that such a charge has ever been made at any market west of the Missouri River. The evidence does show that the management of plaintiff has never assessed such a charge against yard traders at any time since the commencement of the plaintiff's market in 1886.[27]

Dues and Donations: The Secretary, in his computation of plaintiff's income and expenses for rate purposes for the years 1930 to 1934, inclusive, excluded, among other [fol. 1244] items, certain other items of expense carried under "Donations", "Subscriptions, Dues and Miscellaneous" accounts of plaintiff, such as contributions to the Chamber of Commerce, Community Chest, relief societies, etc. The test applied by the Secretary was whether or not the expenditures benefited the shippers or directly benefited plaintiff's employes. There was no testimony that the expenditures made were unreasonable or improper, or objected to by any shipper or patron. We find no evidence of record that the amounts of these items are unreasonable.

Packers & Stockyards Administration Expense: The Secretary allowed plaintiff $1200.00 annually for expense on account of hearings resulting from the enforcement of the Packers and Stockyards Act. The evidence showed that the average yearly expenditure on this account during the years from 1930 to 1934, inclusive, was $8,786.88. It was stipulated into the record in this court that plaintiff expended the sum of $24,654.27 in connection with the hearing out of which this cause arises. This expenditure included expenses up to the entry of the Secretary's order. It was also stipulated that $15,785.00 was the estimated expense of the litigation of this cause in this court. The average expenditure on account of the enforcement of the Packers and Stockyards Act for the years 1924 to 1934, inclusive, was $6,216.00 annually.

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[26] Abs: p. 507.

[27] Abs. pp. 508, 514.

Conclusions

The plaintiff further requests the following Conclusions of Law be entered upon the Findings set forth above:

Railroad and Loading Facilities: There is no doubt that the railroad trackage is used and useful in the handling [fol. 1245] of livestock in commerce which is the definition of a stockyard facility under the Packers and Stockyards Act, 1921. The trackage is indispensable to the performance of that service and of the duty of the plaintiff toward its patrons.

The loading docks, chutes, chute pens and chute alleys are likewise stockyard facilities, used and useful, in the handling of livestock in commerce. They are necessary to the conduct of the plaintiff's business, irrespective of any question as to whether or not the railroad charges paid by the shipper include delivery at destination. No ground exists for their exclusion or for the exclusion of their value from the rate base.

We accordingly conclude that the Secretary erred in excluding the value of the railroad trackage, and loading and unloading facilities from plaintiff's rate base.

Stock Show Property: It is admitted that livestock in large quantities is handled in commerce at and by reason of the stock show. The fact that the stock show properties as such consisting of the stadium and other buildings in Zone 4, may only be used for a brief period out of the year is of no moment. We conclude that the plaintiff has a right in the conduct of its business and the management of its affairs to own these properties which are for the joint benefit of its patrons and its own business, and that therefore the Secretary erred in excluding their value from the rate base of plaintiff.

Value of Used and Useful Lands: It is not the province of the court to determine the valuation of plaintiff's land as to whether the figure adopted by the Secretary is too [fol. 1246] low or too high. The court's sole function is to determine whether or not the finding of the Secretary is supported by substantial evidence. One who presents himself as an expert on land values in a particular locality must demonstrate his knowledge of conditions in that locality or else his opinion cannot be regarded as substantial evidence

within the meaning of the law. The government witness did not demonstrate his qualifications. We conclude that the Secretary's findings in this regard are not supported by substantial evidence.

Per Cent Condition: The finding of the Secretary as to per cent condition of plaintiff's structural property is not supported by substantial evidence and must be set aside. The evidence of one who has never examined nor who has had no opportunity to examine condition of underground structures can not be regarded as substantial as against the testimony of a competent engineer who has made such examination and has had such opportunity.

Going Concern Value: The determination of the present value of land stripped of improvements, and the determination of the value of structural property upon the unit cost basis depreciated to the figure which the rate-making body deems to be the present percentage of reconstruction new total cost does not include any allowance for going concern value. Going concern value is an element of value which does not depreciate in the absence of proof that the utility is retrogressing. No such proof is to be found in the record and we conclude therefore that the Secretary erred [fol. 1247] in excluding this element of value from the rate base of the plaintiff, and under the circumstances, in failing to make a separate allowance therefor.

Surtax on Undistributed Profits: The findings of the Secretary that no allowance should be made on account of the surtax on undistributed profits is erroneous and contrary to law under the circumstances of this case. We necessarily conclude that the amount of such tax paid to meet Sinking Fund requirements of outstanding bonds is a business expense to be provided for in the return permitted to the utility.

Allowance for Interest on Land During Construction: The finding of the Secretary that the item of interest on land during construction is depreciable is contrary to law and must be set aside.

Yard Traders: The finding of the Secretary that the existing practice at plaintiff's yards in assessing no reweigh charge against yard traders is discriminatory is not supported by substantial evidence and must be set aside.

In the absence of proof of discrimination, the exaction of such a charge is a question of business management confided by the law and the decided cases to the owners of the property.

Dues and Donations: The finding of the Secretary excluding from the expense account of petitioner the items carried under the heading of Dues and Donations such as memberships in Chambers of Commerce, reasonable charitable contributions, etc. is arbitrary in the extreme and must be set aside. There is a complete absence of any proof that [fol. 1248] any of these items or their total is unreasonable in either object or amount. Reasonable expenditures of this class are confided by law to the management.

Packers and Stockyards Administration Expense: The finding of the Secretary allowing $1200.00 annually for Packers and Stockyards Administration expense is arbitrary and without substantial support in the evidence. Accordingly, we conclude that it must be set aside.

The above findings and conclusions are respectfully submitted to the court and we request that if any thereof be denied or refused, the same be made a part of the record on appeal with appropriate exceptions noted and reserved.

Robert G. Bosworth, Norman A. Hutchinson, Solicitors for Plaintiff.

[fol. 1249] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—November 15, 1937

The Court, after full hearing and after examining the pleadings, weighing the evidence and being fully advised in the premises, makes the following findings of fact and conclusions of law:

Findings of Fact

1. This is a suit in equity brought pursuant to Section 316 of the Packers and Stockyards Act of 1921 (42 Stat. 159; 7 U. S. C. A. Sec. 17), to set aside an order of the

Secretary of Agriculture dated February 17, 1937, prescribing maximum reasonable rates and charges to be collected by petitioner for the rendition of certain services at its stockyard. The order by its terms was effective thirty days after the date of entry.

2. The jurisdiction of this Court is invoked under the provisions of the Packers and Stockyards Act, 1921, and certain other Acts of Congress known and cited as the Commerce Court Act, approved June 17, 1910, (36 Stat. 539); the Act of March 3, 1911 (36 Stat. 1087); and the District [fol. 1250] Court Jurisdiction Act, being part of the Urgent Deficiency Appropriation Act, approved October 22, 1913 (38 Stat. 219), all of which are assembled and restated in 28 U. S. C. A., Secs. 41-48.

3. The petitioner is a corporation organized and existing under and by virtue of the laws of the State of Colorado, with its principal office and place of business in the City of Denver, County of Denver, where it maintains, owns and operates a stockyard which has been designated as a public stockyard by the Secretary of Agriculture under the provisions of Section 302 of the Packers and Stockyards Act (7 U. S. C. A., Sec. 202).

4. The proceedings before the Secretary of Agriculture, which resulted in the entry of the order herein sought to be set aside, were instituted by an order of inquiry and notice of hearing issued by the Secretary of Agriculture on November 8, 1934. In said order of inquiry and notice of hearing it was alleged that the petitioner herein had therefore filed and put into effect schedules of rates and charges for its services as a stockyard owner and that a proceeding under Title III of the Packers and Stockyards Act, 1921, (Sec. 301 et seq. (7 U. S. C. A., Sec. 201 et seq.)) would be had for the purpose of determining the lawfulness of any and all rates and charges of petitioner and of any rules, regulations and practices whereby any stockyards services are rendered by petitioner without making a lawful charge therefor. Accordingly it was ordered that a hearing for such purpose be held at a time and place specified in said order of inquiry and notice. Notice of such hearing was given to petitioner by serving upon it a copy of said order of inquiry and notice of hearing.

[fol. 1251] 5. Pursuant to the aforesaid order of inquiry and notice, a hearing was held at Denver, Colorado, before an examiner designated by the Secretary of Agriculture beginning on June 3, 1935, and ending on July 3, 1935. Petitioner was represented by counsel throughout that hearing. At that hearing a record of testimony was made consisting of 2300 pages, and 118 exhibits containing 4000 pages were introduced. This testimony and these exhibits constituted the record before the Secretary upon which the order herein challenged was based. On October 28, 1936, a tentative report was served on petitioner. Petitioner filed exceptions to the tentative report on January 7, 1937, and respective counsel presented oral arguments before the Acting Secretary of Agriculture. At the time of the oral argument, petitioner filed certain additional information for consideration by the Secretary.

6. On February 17, 1937, the Acting Secretary entered the order herein complained of, accompanied by comprehensive findings of fact. By the order the yardage charges imposed by petitioner were changed to the extent shown by the following table:

	Rates and Charges in effect		Rates and Charges Prescribed in the Order			
Species	Rail Receipts per head	Truck Receipts per head	Rail per head	Truck-ins per head	Re-weighs per head	Direct per head
Cattle	.35	.40	.30	.35	.15	...
Calves	.25	.27	.20	.25	.10	...
Hogs	.12	.14	.12	.14	.06	.06
Sheep & Goats	.08	.10	.075	.10	.03	...
Horses & Mules	.35	...	.35	.....	.35	...
Purebred bulls	$1.00	...	$1.00	$1.00	$1.00	...

[fol. 1252] The rates for feed and bedding existing at the date of the inquiry were changed by the order in the manner set out in the following table:

	Rates and Charges in effect Price per unit	Rates and Charges Prescribed in the Order Profit per unit
Hay (on fence)	$1.40 per cwt.	.50 per cwt.
Hay (fed out)	$1.50 per cwt.	.60 per cwt.
Bedding Straw	.65 per bale	.40 per bale
Corn	$1.50 per bushel measure	.45 per bushel measure
Miscellaneous Feed	....	.50 per cwt.

In the Secretary's rates the charges for feed and bedding are always divisible by five and the stockyard company may amend its charges whenever the margin between the cost and the sale price varies five cents from the margin of profit set forth above. The effect of the Secretary's rates on feed and bedding is to make such rates dependent upon the market price of the commodities. With respect to certain minor services performed by the petitioner, such as branding, dipping, disinfecting, testing, and immunizing, etc., the Secretary's order contained the rates already in effect.

7. On March 9, 1937, the present suit was instituted. Among other things petitioner sought a temporary restraining order, an interlocutory injunction, and a permanent injunction. On the same day an interlocutory injunction against the enforcement of the Secretary's order was entered by consent of defendants who appeared by the United States Attorney, and petitioner was required by this Court to execute a bond in the sum of $50,000 to indemnify the shippers of livestock against amounts paid by them in excess of the rates and charges prescribed by the Secretary's order in the event that the order should be upheld by this Court.

8. Prior to the trial before this Court, petitioner and defendants entered into various stipulations of fact. These [fol. 1253] stipulations, together with the record made before the Secretary of Agriculture, constituted the evidence before this Court.

Land Used and Useful in the Rendition Stockyard Services

9. The petitioner owns 130.57 acres of land. Appraisers for both the petitioner and the Secretary of Agriculture appraised the land. Preparatory to the appraisal, the petitioner's land was divided by agreement into ten zones. All appraisers employed these zones in setting a value upon petitioner's land. The Secretary found that 83.791 acres of land are used and useful in the rendition of stockyard services and that 46.779 acres of land are not used and useful in rendering such services. The area of each zone, the amount of land in each zone found by the Secretary to be

used and useful and the amount of land in each zone found to be not used and useful are shown by the following table:

Zone	Area	Used and Useful	Not Used and Useful
1	38.267	33.360	4.907
2	22.982	22.147	.835
3	19.825	12.117	7.708
4	18.722	10.725	7.997
5	12.640	....	12.640
6	3.383	.235	3.148
7	4.608	.....	4.608
8	.759	.759	.....
9	7.081	4.448	2.633
10	2.303	.....	2.303

The value of that land found by the Secretary to be not used and useful in the rendition of stockyard services was excluded from the rate base. The Secretary's specific findings as to the used and useful character of the land in each zone are set out in paragraphs 31-74 of the order.

[fol. 1254] 10. The Secretary excluded from the rate base the value of all structures located on land found by him to be not used and useful in the rendition of stockyard services.

11. 35.161 acres of vacant land excluded as being not used and useful are not being utilized for any purpose. Petitioner's business is not expanding. Its present facilities are ample for its present needs and no showing has been made that additional land is, or will presently be, needed for expansion purposes. Petitioner has no definite plans to utilize its vacant land in the near or distant future. This land is not used and useful in the rendition of stockyard services.

12. 8.985 acres of the land excluded as being not used and useful are occupied by railroad trackage, loading and unloading docks, loading and unloading chutes and pens, and yardmaster's office, and a trackman's tool house. These facilities are owned by petitioner, but are leased to the railroad serving the stockyards under an agreement whereby the railroads pay the plaintiff for the use of the property, cost of maintenance, repairs of tracks and taxes and assessments. In addition, the railroads pay petitioner on a per car basis for performing loading and unloading services.

The amounts so paid are absorbed by the railroads or are included in the freight rates. The locomotives, transportation equipment, etc., essential to the use of this property are furnished and operated by the several railroads. The loading and unloading docks, chutes and pens which are leased by the railroads from petitioner are used exclusively for handling live stock in the course of transportation to and from petitioner's stockyards. The services in connection with which this property is used are transportation services furnished by the several railroads. This property and the structures thereon are not used and useful in the rendition of stockyard services.

[fol. 1255] 13. 2.633 acres of the land excluded as being not used and useful are occupied by so-called stock show buildings consisting of a stadium, sales pavilion, and certain other buildings used in connection with a stock show. Petitioner does not carry on any of its business in these buildings. Petitioner leases this property to the Western Stock Show Association, a Colorado corporation, which operates an annual livestock show on the premises. The expenses of the show are borne in part by public subscription and in part by the receipts from the sale of tickets. Petitioner pays the taxes upon this property and has, in the past, made substantial contributions to cover deficits resulting from the operation of the show.

14. The so-called stock show property is unused except at such times as when it is under lease to the Western Stock Show Association or to other parties. The Secretary does not regulate the charges imposed by petitioner for the use of this property. The only time at which the property is used in connection with livestock is during the one week each year that the Western Stock Show Association is occupying the premises and conducting the stock show. At that time a very small portion of livestock is housed or exhibited on these premises. The Western Stock Show Association does not pretend to furnish any stockyard facilities in connection with the handling of this livestock and the Secretary does not attempt to regulate the charges made in connection with the stock show. The stock show causes more livestock to arrive at petitioner's stockyards during the month of January than would normally arrive in that month in the absence of the stock show.

This livestock is handled in the regular facilities of the stockyard and is charged for at the usual rate.

[fol. 1256] 15. The income from such livestock is not attributable to the stock show but is derived from the use of and services rendered in connection with petitioner's ordinary stockyard facilities. Whatever livestock is attracted to Denver by the stock show would filter through petitioner's stockyards at other seasons of the year. Consequently, there is no substantial increase in the total income received by petitioner. Whatever benefits result to the livestock industry from the stock show are indirect benefits to the industry as a whole.

16. The evidence in no way warrants the conclusion that the stock show is a stockyard service. The stock show property is not used and useful in rendering stockyard services and its exclusion does not affect the value of petitioner's property as an integrated and established enterprise.

Land Value

17. The evidence as to the value of petitioner's land was submitted in the form of two appraisals. One appraisal was made by an expert land appraiser for the Department of Agriculture. The other appraisal was made by a board of three local realtors whom the petitioner employed. The government land appraiser was a man of high professional standing and of unquestioned integrity and long experience in his profession. In making his appraisal the Government appraiser took into account the nearby location of different packing houses which could take care of the products and by-products of the stockyard, the location with respect to various railroads and public highways, and various sales of adjoining and nearby lands. The Government land appraiser considered petitioner's property as an assembled tract and valued it at its highest and best use, which was for stockyard purposes. Petitioner's board of appraisers [fol. 1257] placed a much higher value on petitioner's land than did the Government appraiser. Their testimony shows that this was the result of giving the land an added increment of value arising from the fact that a successful stockyard was now operating thereon.

18. The Government appraiser appraised all of petitioner's land at $724,974 and the used and useful portion thereof

at $536,825. The Secretary adopted this appraisal as representing the true value of petitioner's property. The fair and reasonable value of all of petitioner's land is $724,974 and the value of petitioner's used and useful land is $536,825.

Structure and Equipment

19. The Secretary determined the present value of petitioner's structures and equipment by first finding the reproduction cost new of all items included under this heading and then applying a condition per cent to the reproduction cost new in order to make proper allowance for depreciation. The valuation experts for both parties agreed that the reproduction cost new of petitioner's structures and equipment was $2,118,960. The Government expert testified that the condition per cent of petitioner's property was 80.545% and that consequently the reproduction cost new less depreciation of petitioner's property was $1,706,-717.14. Petitioner's expert testified that the condition per cent of petitioner's property was 88.9% and that consequently the reproduction cost new less depreciation of petitioner's property was $1,883,756.33. The Secretary adopted the testimony of the Government expert and concluded that the reproduction cost new of petitioner's structures and equipment was $1,706,717.14.

[fol. 1258] 20. The reproduction cost new of petitioner's structures and equipment is $2,118.960 and 80.545% of that amount is the reproduction cost new less depreciation. The fair and reasonable present value of petitioner's equipment and structures is $1,706,717.14.

Going Concern Value

21. No separate allowance is made for going concern value but that value is included in the total rate base upon which petitioner is permitted to earn a reasonable return. The valuation expert for the Government, whose estimates were adopted, based his valuation upon material in place and upon a property ready and able to function as a stockyard and as a business earning an income. As to particular details: He allowed interest during construction on the structural property; considered such items as proximity to highways and railroads; freedom from floods; access to

water supply and other city services; favorable location in regard to related industries; and the effect of the city zoning ordinance. He also testified that he valued the property higher because of its availability for a stockyard and as an assembled tract as distinguished from several tracts in separate ownership. He also included construction overheads, general overheads, and added 5% in addition for omissions and contingencies, omitting, however, organization expenses. Consideration was given to the peculiar climatic conditions of Denver as affecting rot, rust, and decay. The Secretary added to the Government expert's figures $30,267 to cover interest on used and useful land during the construction period and added $139,300 for working capital. The result arrived at by the Secretary was a rate base of $2,792,700 on which petitioner was to be permitted to earn a fair rate.

[fol. 1259] 22. Petitioner's valuation expert testified that not less than $350,000 should be allowed as going concern value. This figure was arrived at by multiplying the yearly average of 35,000 cars of livestock by $10.00. This formula is arbitrary and has no support in the evidence. An attempt was made to justify the formula by evidence that petitioner had made donations to packing plants and railroad companies for so-called development of business in the amount of $325,000. The benefits, if any, from such donations are speculative and have not been identified. Petitioner's success is not the result of such artificial stimuli but due rather to efficient management and financing and the advantage that the locality offers to an enterprise of this kind.

23. $2,792,700 is the fair rate base upon which petitioner is entitled to earn a fair return. Inextricably interwoven in this figure is an adequate allowance for going concern value.

Rate of Return

24. The Secretary's finding that 6½% is a fair rate of return is based upon expert testimony that a return of from six to seven per cent on the fair value of petitioner's property would be reasonable in the light of money costs in the general and local money market. Petitioner's stocks and bonds are unquestionably sound investments of high quality. Furthermore, petitioner's business, as well as stockyard enterprises generally, has proved remarkably stable dur-

ing the past ten years. It appears from the record that relatively low money rates may be expected to continue for the next few years. In view of these circumstances 6½% represents a reasonable rate of return on the fair value of petitioner's business.

[fol. 1260] Trader Yardage Charge

25. The structure of petitioner's existing schedule of rates and charges is such that, with the exception of livestock resold through commission merchants, all yardage charges are assessed and collected from those who cause the livestock to come to the stockyards. Those who purchase livestock within the stockyard fall into two general classes, namely, (1) those who purchase to remove it from the stockyard and (2) those who purchase to resell and otherwise trade in it within the stockyard. Buyers of the latter class are usually called traders or speculators. Petitioner has permitted traders or speculators to set up their places of business within the stockyard without charge except insofar as petitioner may benefit from profit on feed sold to such traders or speculators and from the income which may be realized from the yardage charge on resales through Commission firms by such traders or speculators. It is unjustly discriminatory and unreasonable for petitioner to maintain a large section of its valuable property for the use of such traders or speculators and to incur numerous expenses in the rendition of this service to one class of its patrons and then renumerate itself for the use of such facilities and for the rendition of such services through a charge on another class of patrons.

26. The Secretary found that the traders or speculators ought to pay for services rendered to them substantially one-half of the rates and charges imposed upon those who send their livestock to market for sale. This is a reasonable charge for the services rendered and facilities furnished to the traders or speculators.

27. The schedule of maximum reasonable rates prescribed by the Secretary was computed and ascertained upon the basis that petitioner would either impose upon all its patrons selling livestock in its stockyard the maximum rates pre-[fol. 1261] scribed or that it would content itself to bear the losses occasioned by charging less than the maximum

to any class of its patrons. Stated otherwise, the maximum reasonable rates on resales found by the Secretary are computed upon the assumption that upon all livestock sold a second successive time or reweighed in the stockyards for purposes of resale, there will be imposed a service and/or weighing charge which is substantially one-half of the yardage charge upon the same species and class of livestock when received by rail.

28. There is no dispute as to the volume of livestock handled by traders or speculators. Consequently, it is possible to determine the amount of income which might reasonably be expected from a charge upon traders or speculators, amounting to one-half the rates and charges imposed upon those who send their livestock to market for sale. The record contains a full description of the services made available by petitioner to traders or speculators, including a detailed description of petitioner's facilities and services and the manner in which traders or speculators carry on their activities. While there is considerable similarity in the services and facilities afforded to traders or speculators and those afforded to the shippers of livestock, yet there is sufficient difference in the service rendered, inasmuch as traders or speculators performed some of their own labor, to warrant the imposition of a lower rate or charge upon the traders or speculators than is imposed upon shippers.

Certain Expenses

29. An analysis of the detailed audit of contributions, donations, etc. made by petitioner in the past reveals that slightly over $300 is contributed annually to activities which benefit petitioner's employees or patrons. On this basis [fol. 1262] $325 was covered into the rates for this item of expense.

30. $1200 annually is a sufficient amount to cover into rates for future expenses on account of hearings under the Packers and Stockyards Act. It is unlikely that petitioner's future expenditures for this purpose will represent any substantial amount.

31. Petitioner has complained of the exclusion of certain amounts from the $336,545 covered into rates for expenses. The action of the Secretary in this regard was not arbitrary.

The amounts which petitioner seeks to have included are too trivial to affect the validity of the Secretary's order. The exclusion of such amounts does not affect the sufficiency of the return which petitioner is permitted to earn on the fair value of its property.

32. In order for petitioner to pay its reasonable expenses in rendering stockyard services and earn a return of 6½% on the fair value of its property which is used and useful in rendering stockyard services, the rates charged must produce $528,071. On the basis of the test period 1930-1934, inclusive, the Secretary of Agriculture estimated that the prescribed rates would yield $530,117. Applying these rates to the actual volume of business handled by petitioner in the year 1935, the rates would have yielded $528,587.75. Applying the rates prescribed by the Secretary to the volume of business actually handled by petitioner in the year 1936, the rates would have yielded $558,760.44.

33. The volume of business handled at petitioner's stockyards was smaller during 1935 and 1936 than may reasonably be expected in the future. A general upward trend of livestock receipts may reasonably be expected during the next few years.

[fol. 1263] 34. Over a period of time in the future the rates will yield an amount sufficient to pay all reasonable costs incurred in rendering stockyard services plus a return of more than 6½% on the fair value of petitioner's property which is used and useful in rendering stockyard services.

35. The findings of the Secretary are not arbitrary or unreasonable and are supported by the weight of the evidence.

36. In addition to the foregoing findings of fact this court adopts the findings made by the Secretary as its own and makes them a part hereof as though specifically incorporated herein.

Conclusions of Law

1. This Court has jurisdiction of the matters set forth in the petition herein by reason of certain acts of Congress known and cited as the Packers and Stockyards Act, 1921 (42 Stat. 159); the Commerce Court Act of June 18, 1910 (36 Stat. 539); the Act of March 3, 1911 (36 Stat. 1087); and the District Court Jurisdiction Act being part of the

Urgent Deficiencies Appropriations Act (238 Stat. 219), approved October 22, 1913, and amendments thereto.

2. Under the provisions of the Packers and Stockyards Act, 1921, the Secretary of Agriculture had jurisdiction under the notice served on petitioner to enter into an inquiry on his own motion as to the reasonableness and lawfulness of all the rates and charges for stockyard services in effect at petitioner's stockyard.

3. Under the provisions of the Packers and Stockyard Act, 1921, the Secretary of Agriculture in determining whether the rates and charges imposed by a stockyard are unreasonable or unlawful and in the prescribing and fixing of lawful rates and charges for the future has the power [fol. 1264] and authority to value the property of a stockyard owner devoted to stockyard services and to determine upon a fair rate of return as a factor in rate making.

4. Under the provisions of the Packers and Stockyards Act, 1921, the Secretary of Agriculture, in determining whether the rates and charges imposed by the stockyard are unreasonable or unlawful and in the prescribing and fixing of reasonable and lawful rates and charges for the future, has the power and authority to investigate the actual expenses incurred by a stockyard owner in the operation of the stockyard and to cover into rates only such expenses as are reasonably necessary for the performance of the stockyard services rendered by the stockyard owner.

5. Under the provisions of the Packers and Stockyards Act, 1921, the Secretary of Agriculture, in determining whether the rates and charges imposed by a stockyard are unreasonable or unlawful and in the prescribing and fixing of reasonable and lawful rates and charges for the future, has the power and authority to investigate all available sources of revenue for the stockyard and to include in an estimate of future revenues all sums which should be received by the stockyard for services rendered regardless of whether or not any charge has been made for such services in the past.

6. Petitioner was accorded a full and fair hearing by the Secretary of Agriculture. The Secretary's order does not confiscate petitioner's property but is fair, reasonable and lawful.

7. The method used by the Secretary in determining that petitioner's rates and charges were unreasonable and unlawful and in prescribing and fixing reasonable and lawful rates and charges for the future, was not arbitrary or unreasonable but was the lawful method which has been apporved by the Courts.

[fol. 1265] 8. The railroad trackage, loading and unloading docks, chutes and pens, the yardmaster's office, the trackman's tool house and the 8.985 acres of land upon which these structures are situated are not used and useful in rendering stockyard services because as a matter of law the services in connection with which this property is used are transportation services.

9. The stock show property, including the stadium, sales pavilion, etc., and the 2.633 acres of land upon which these buildings are situated, is not used and useful in rendering stockyard services as defined in the Packers and Stockyards Act of 1921.

10. The Secretary was not required to adopt the proposed findings in the tentative report which was submitted to the petitioner, but was required as a matter of law to consider the evidence and exercise his independent judgment thereon.

11. The rate schedule prescribed in the order of the Secretary is not unfair and the rates for the various services are not unfair in their relation to each other, and the yardage charges are not unfair as applied to the several species of livestock. The prescribed rates for the various services as applied to the several species in their relation to each other are supported by the weight of the evidence and as a whole are lawful.

12. The rates prescribed by the Secretary will yield a fair return upon the fair value of all of its property which is used and useful in rendering stockyard services. The rates prescribed by the Secretary do not confiscate petitioner's property and are fair, reasonable and lawful.

13. Petitioner's cause is without equity and the temporary injunction heretofore granted should be dissolved [fol. 1266] and the prayer for a permanent injunction denied and the petition dismissed without prejudice and petitioner should by decree be ordered, within the time to be

fixed by this Court, to refund to the users of petitioner's service such portion of their rates and charges collected by it on and after March 19, 1937, as are in excess of the rates and charges specified as reasonable in the order of the Secretary of Agriculture involved in this suit with interest at 6 per cent per annum from date of payment.

14. The defendants should recover their costs and disbursements.

—— ——, Circuit Judge. —— ——, District Judge.
—— —— District Judge.

[fol. 1267] [File endorsement omitted]

In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed December 20, 1937

This cause coming on to be heard before a statutory court of three judges sitting in and for the District of Colorado on June 22nd and 23rd, 1937, the Honorable Sam G. Bratton, Circuit Judge, presiding, and with him the Honorable J. Foster Symes and the Honorable Alfred P. Murrah, District Judges, the parties being represented by counsel and the evidence and proofs being before the Court, the cause was argued by counsel, and the Court being fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. This is a suit in equity brought pursuant to Sec. 316 of the Packers and Stockyards Act of 1921 (42 Stat. 159; 7 U. S. C. A. Sec. 17), to set aside an order of the Secretary of Agriculture dated February 17, 1937, prescribing maximum reasonable rates and charges to be collected by petitioner for the rendition of certain services at its stockyard.

The petitioner is a corporation organized and existing under and by virtue of the laws of the State of Colorado, [fol. 1268] with its principal office and place of business in the City of Denver, County of Denver, where it main-

tains, owns and operates a stockyard which has been designated as a public stockyard by the Secretary of Agriculture under the provisions of Sec. 302 of the Packers and Stockyards Act (7 U. S. C. A. Sec. 202).

2. The proceedings before the Secretary of Agriculture, which resulted in the entry of the order herein sought to be set aside, where instituted by an order of inquiry and notice of hearing issued by the Secretary of Agriculture on November 8, 1934. In said order of inquiry and notice of hearing it was alleged that the petitioner herein had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner and that a proceeding under Title III of the Packers and Stockyards Act, 1921 (Sec. 301 et seq.; 7 U. S. C. A. Sec. 201 et seq.), would be had for the purpose of determining the lawfulness of any and all rates and charges of petitioner and of any rules, regulations and practices whereby any stockyard services are rendered by petitioner without making a lawful charge therefor. Accordingly it was ordered that a hearing for such purpose be held at a time and place specified in said order of inquiry and notice. Notice of such hearing was given to petitioner by serving upon it a copy of said order of inquiry and notice of hearing.

3. Pursuant to the aforesaid order of inquiry and notice, a hearing was held at Denver, Colorado, before an examiner designated by the Secretary of Agriculture beginning on June 3, 1935, and ending on July 3, 1935. Petitioner duly appeared and gave evidence at said hearing.

4. On February 17, 1937, the Acting Secretary entered the order herein complained of, accompanied by compre-
[fol. 1269] hensive findings of fact. By the order, among other things, the yardage charges imposed by petitioner were changed to the extent shown by the following table:

	Rates and Charges in effect		Rates and Charges Prescribed in the Order			
Species	Rail Receipts per head	Truck Receipts per head	Rail per head	Truck-ins per head	Re-weighs per head	Direct per head
Cattle	.35	.40	.30	.35	.15	...
Calves	.25	.27	.20	.25	.10	...
Hogs	.12	.14	.12	.14	.06	.06
Sheep & Goats	.08	.10	.075	.10	.03	...
Horses & Mules	.35	...	.35	.....	.35	...
Purebred bulls	$1.00	...	$1.00	$1.00	$1.00	...

The rates for feed and bedding existing at the date of the inquiry were changed by the order in the manner set out in the following table:

	Rates and Charges in effect	Rates and Charges Prescribed in the Order
	Price per unit	Profit per unit
Hay (on fence)	$1.40 per cwt.	.50 per cwt.
Hay (fed out)	$1.50 per cwt.	.60 per cwt.
Bedding Straw	.65 per bale	.40 per bale
Corn	$1.50 per bushel measure	.45 per bushel measure
Miscellaneous Feed	.....	.50 per cwt.

In the rates the charges for feed and bedding are always divisible by five *the* the stockyard company may amend its charges whenever the margin between the cost and the sale price varies five cents from the margin of profit set forth above.

5. Prior to the trial before this Court, petitioner and defendants entered into various stipulations of fact. These stipulations, together with the pleadings and the record made before the Secretary of Agriculture, constituted the evidence before this Court.

Land Used and Useful in the Rendition of Stockyard Services

6. The petitioner owns 130.57 acres of land. 83.791 acres of land are used and useful in the rendition of stockyard [fol. 1270] services and 46.779 acres of land are not used and useful in rendering such services. The area of each zone, the amount of land in each zone used and useful, and the amount of land in each zone not used and useful are shown by the following table:

Zone	Area	Used and Useful	Not Used and Useful
1	38.267	33.360	4.907
2	22.982	22.147	.835
3	19.825	12.117	7.708
4	18.722	10.725	7.997
5	12.640	.....	12.640
6	3.383	.235	3.148
7	4.608	.....	4.608
8	.759	.759	....
9	7.081	4.448	2.633
10	2.303	......	2.303

The value of that land not used and useful in the rendition of stockyard services is excluded from the rate base.

7. 35.161 acres of vacant land excluded as being not used and useful are not being utilized for any purpose. Petitioner's present facilities are ample for its present needs and no showing has been made that additional land is, or will presently be, needed for expansion purposes. This land is not used and useful in the rendition of stockyard services.

8. 8.985 acres of the land excluded by the order as being not used and useful are occupied by railroad trackage, alley ways, loading and unloading docks, loading and unloading chutes and pens, and yardmaster's office, and a trackman's tool house. These facilities are owned by petitioner, but are leased to the railroads serving the stockyards under an agreement whereby the railroads pay the plaintiff for the use of the property, cost of maintenance, repairs of tracks and taxes and assessments. In addition, the railroads pay petitioner on a per car basis for performing loading and unloading services. The amounts so paid [fol. 1271] are absorbed by the railroads or are included in the freight rates. The locomotives, transportation equipment, etc., essential to the use of this property, are furnished and operated by the several railroads. The loading and unloading docks, chutes and pens which are leased by the railroads from petitioner are used exclusively for handling livestock in the course of transportation to and from petitioner's stockyards. This property and the structures thereon are not used and useful in the rendition of stockyard services.

9. 2.633 acres of the land excluded as being not used and useful are occupied by so-called stock show buildings consisting of a stadium, sales pavilion, and certain other buildings used in connection with a stock show. Petitioner does not carry on any of its business in these buildings. Petitioner leases this property to the Western Stock Show Association, a Colorado corporation, which operates an annual livestock show on the premises. The expenses of the show are borne in part by public subscription and in part by the receipts from the sale of tickets. Petitioner pays the taxes upon this property and has, in the past, made substantial contributions to cover deficits resulting from the operation of the show.

10. The so-called stock show property is unused except at such times as when it is under lease to the Western Stock Show Association or to other parties. The Secretary does not regulate the charges imposed by petitioner for the use of this property. The only time at which the property is used in connection with livestock is during the one week each year that the Western Stock Show Association is occupying the premises and conducting the stock show. The Wes-
[fol. 1272] tern Stock Show Association does not pretend to furnish any stockyard facilities in connection with the handling of this livestock and the Secretary does not attempt to regulate the charges made in connection with the stock show.

11. Whatever benefits result to the livestock industry from the stock show are indirect benefits to the industry as a whole.

12. The stock show property is not used and useful in rendering stockyard services and its exclusion does not affect the value of petitioner's property as an integrated and established enterprise.

Land Value

13. The fair and reasonable value of all of petitioner's land is $724,974 and the value of petitioner's used and useful land is $536,825.

Structure and Equipment

14. The reproduction cost new of petitioner's structures and equipment is $2,118,960 and 80.545% of that amount is the reproduction cost new less depreciation. The fair and reasonable value of petitioner's equipment and structures is $1,706,717.14.

Going Concern Value

15. No separate allowance is made for going concern value, but an allowance for going concern value is included in the total rate base upon which petitioner is permitted to earn a reasonable return. In addition the rate base includes among others such items as allowances for proximity to highways and railroads; freedom from floods; access to water supply and other city services; favorable loca-

[fol. 1273] tion in regard to related industries; and the effect of the city zoning ordinance; its availability for a stockyard and as an assembled tract as distinguished from several tracts in separate ownership. Also included is construction overheads, general overheads, and 5% in addition for omissions and contingencies, omitting, however, organization expenses. Consideration was given to the peculiar climatic conditions of Denver as affecting rot, rust, and decay. $30,267 was added to cover interest on used and useful land during the construction period and $139,300 added for working capital. The result arrived at is the sum of $2,792,700 as a fair rate base upon which petitioner is entitled to earn a fair return.

Rate of Return

16. 6½% is a fair rate of return on said rate base or valuation.

Trader Yardage Charge

17. The structure of petitioner's existing schedule of rates and charges is such that, with the exception of livestock resold through commission merchants, all yardage charges are assessed and collected from those patrons who cause the livestock to come to the stockyards. It is unjust, discriminatory and unreasonable for petitioner to maintain and set aside a large section of its valuable property for the use of yard traders or speculators and to incur numerous expenses in the rendition of stockyards services to this class of patrons without charge and then remunerate itself for the use of such facilities and for the rendition of such services by increased charges on other patrons.

18. The traders or speculators ought to pay for services rendered to them substantially one-half of the rates and [fol. 1274] charges imposed upon those who send their livestock to market for sale. This is a reasonable charge for the services rendered and facilities furnished to yard traders or speculators.

19. While there is considerable similarity in the services and facilities afforded to traders or speculators and those afforded to the shippers of livestock, yet there is sufficient difference in the service rendered, inasmuch as traders or speculators performed some of their own labor, to warrant

the imposition of a lower rate or charge upon the traders or speculators than is imposed upon shippers.

Certain Expenses

20. An analysis of the detailed audit of contributions, donations, etc., made by petitioner in the past reveals that slightly over $300 is contributed annually to charities and community activities which benefit petitioner's employees or patrons. $325 annually is a proper sum to cover into the rates for this item of expense.

21. $1200 annually is a proper amount to cover into rates for future expenses on account of hearings under the Packers and Stockyards Act.

22. In order for petitioner to pay its reasonable expenses in rendering stockyard services and earn a return of 6½% on the fair value of its property used and useful in rendering stockyard services, the rates charges must produce $528,071. On the basis of the test period, 1930-1934, inclusive, the prescribed rates will yield $530,117. Applying these rates to the actual volume of business handled by petitioner in the year 1935, the rates would have yielded $528,587.75. Applying the rates prescribed by the Secretary [fol. 1275] to the volume of business actually handled by petitioner in the year 1936, the rates would have yielded $558,760.44.

23. Over a period of time in the future the rates prescribed by the Secretary's order will yield an amount sufficient to pay all reasonable costs incurred in rendering stockyard services plus a return of 6½%, or more, on the fair value of petitioner's property used and useful in rendering stockyard services.

Conclusions of Law

1. This Court has jurisdiction of the parties and the matters set forth in the petition herein and all questions of law and fact raised by the pleadings and record, by reason of certain acts of Congress known and cited as the Packers and Stockyards Act, 1921, (42 Stat. 159); the Commerce Court Act of June 18, 1910 (36 Stat. 539); the Act of March 3, 1911 (36 Stat. 1087); and the District Court Jurisdiction Act being part of the Urgent Deficiencies Ap-

propriations Act (238 Stat. 219), approved October 22, 1913, and amendments thereto.

2. Under the provisions of the Packers and Stockyards Act, 1921, the Secretary of Agriculture had jurisdiction under the notice served on petitioner to enter into an inquiry on his own motion as to the reasonableness and lawfulness of all the rates and charges for stockyard services in effect at petitioner's stockyard.

3. Petitioner was accorded a full and fair hearing by the Secretary of Agriculture. The Secretary's order does not confiscate petitioner's property but is fair, reasonable and lawful.

4. The method used by the Secretary in determining that petitioner's rates and charges were unreasonable and un- [fol. 1276] lawful and in prescribing and fixing reasonable and lawful rates and charges for the future, was not arbitrary or unreasonable, but was lawful.

5. The railroad trackage, loading and unloading docks, chutes and pens, the yardmaster's office, the trackman's tool house and the land upon which these structures are situated are not used and useful in rendering stockyard services because as a matter of law the services in connection with which this property is used are transportation services.

6. The stock show property, including the stadium, sales pavilion, etc., and the 2.633 acres of land upon which these buildings are situated, is not used and useful in rendering stockyard services as defined in the Packers and Stockyards Act of 1921.

7. The Secretary was not required to adopt the proposed findings in the tentative report which was submitted to the petitioner, but was required as a matter of law to consider the evidence and exercise his independent judgment thereon.

8. The rate schedule prescribed in the order of the Secretary is fair and reasonable and the rates for the various services are fair in their relation to each other, and the yardage charges are fair as applied to the several species of livestock. The prescribed rates and findings of the Secretary are not arbitrary or unreasonable for the various services as applied to the several species and in their rela-

tion to each other and are supported by the weight of the evidence and as a whole are lawful.

9. The rates prescribed by the Secretary will yield a fair return upon the fair value of all of its property which is used and useful in rendering stockyard services, and do [fol. 1277] not confiscate petitioner's property.

10. Petitioner's cause is without equity, the temporary injunction heretofore granted should be dissolved, a permanent injunction denied and the petition be dismissed, with costs to the defendants. The petitioner be ordered, within the time to be fixed by this Court, to refund to the users of petitioner's service such portion of their rates and charges collected by it on and after March 19, 1937, as are in excess of the rates and charges specified as reasonable in the order of the Secretary of Agriculture involved in this suit with interest at 6 per cent per annum from date of payment.

Sam G. Bratton, Circuit Judge. J. Foster Symes, District Judge. Alfred P. Murrah, District Judge.

[fol. 1278] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO

In Equity. N. 10913

THE DENVER UNION STOCK YARD COMPANY, a Corporation, Plaintiff,

v.

UNITED STATES OF AMERICA and SECRETARY OF AGRICULTURE, Defendants

DECREE—Filed December 20, 1937

This cause came on for final hearing on June 22nd and 23rd, 1937, before a statutory three-judge court, sitting as the District Court of the United States, in and for the District of Colorado, and duly convened pursuant to the provisions of the Act of Congress of October 22, 1913 (28 U. S. C. A. § 47), and all parties being represented by counsel, the matter was fully argued and the Court being fully advised, and

having filed this day its findings of fact and conclusions of law, it is—

Ordered, Adjudged and Decreed:

(1) That the findings of fact and conclusions of law requested by the parties are denied, save and except as the findings and conclusions requested are incorporated in the [fols. 1279-1291] findings and conclusions this day made.

(2) That the interlocutory injunction granted herein on March 11, 1937 be, and the same is hereby dissolved, and the petitioner be and is hereby ordered within 30 days of this date to refund to the users of petitioner's services such portion of their rates and charges collected by it on and after March 19, 1937, as are in excess of the rates and charges specified as reasonable in the order of the Secretary of Agriculture involved in this case, dated February 17, 1937, with interest at six per cent per annum from date of payment.

(3) That the petition of the petitioner filed herein be, and hereby is, dismissed.

(4) That the defendants recover their costs and disbursements.

Denver, Colorado, December 20, 1937.

Sam G. Bratton, Circuit Judge. J. Foster Symes, District Judge. Alfred P. Murrah, District Judge.

[fol. 1292] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE CONTINUATION OF TEMPORARY INJUNCTION—Filed January 20, 1938

Whereas, The plaintiff in this cause is taking an appeal to the Supreme Court of the United States from the decree of the District Court herein and desires to have the interlocutory injunction heretofore entered herein continued in effect until the determination of such appeal, and

Whereas, The defendants herein are willing that an order enter continuing the interlocutory injunction in effect until the determination of said appeal upon the posting of a bond in the sum of $90,000.00, conditioned as in the original bond [fol. 1293] herein, and with the added condition that appellant shall prosecute its appeal to effect, and, if it fails to make its plea good, shall answer all damages and costs (said bond to be filed in lieu of the present $50,000.00 bond now on file herein), and

Whereas, It is the desire of the parties that such appeal shall operate as a supersedeas, and said bond as a supersedeas bond, and that all further proceedings in this court shall be stayed pending determination of said appeal,

It is Hereby Stipulated and Agreed, By and between the parties to this cause:

That the Court may make and enter its order continuing in effect the interloctuory injunction heretofore granted herein until this cause is finally determined by the Supreme Court of the United States, upon condition that plaintiff file with this Court a bond of $90,000.00 conditioned as in the original bond herein, and with the added condition that appellant shall prosecute its appeal to effect, and, if it fail to make its plea good, shall answer all damages and costs; and may order that such appeal shall operate as a supersedeas and all proceedings in this court shall be stayed pending determination of said appeal;

And it is Further Agreed:

That upon plaintiff filing with this court the $90,000.00 [fols. 1294-1300] bond mentioned above, the present $50,000.00 bond herein may be canceled.

Dated January 18th, 1938.

Robert G. Bosworth, Norman A. Hutchinson, Attorneys for Plaintiff. Thomas J. Morrissey, Attorneys for Defendants.

[fol. 1301] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 20, 1938

The petition of the plaintiff in this cause for an appeal from the findings of fact, conclusions of law and final decree herein is hereby granted and the appeal is allowed; and plaintiff, having filed a bond in the sum of ninety thousand ($90,000.00) Dollars conditioned as by law required, and with sufficient sureties in lieu of the fifty thousand ($50,-000.00) Dollar bond heretofore filed herein,

It is Ordered:

That said bond be, and the same is hereby approved, [fol. 1302] and said appeal shall operate as a supersedeas of the decree made and entered in the above cause, and all further proceedings of this Court herein shall be suspended and stayed and the interlocutory injunction heretofore entered in this cause shall continue in full force and effect, until the final determination of said appeal by the Supreme Court of the United States.

Dated Jan. 20th, 1938.

By the Court.

Sam G. Bratton, Circuit, Judge. J. Foster Symes, District Judge. Alfred P. Murrah, District Judge.

[fol. 1303] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE INCORPORATION OF NARRATIVE STATEMENT IN RECORD—Filed January 27, 1938

Whereas the plaintiff has caused to be printed and has filed with the trial court an abstract of the evidence taken by the Secretary of Agriculture in the administrative hearing before him, and the plaintiff now desires to submit copies of the aforesaid printed abstract of evidence to the Clerk

of the Supreme Court in accordance with Rule 38, paragraph 7, of the Revised Rules of the Supreme Court of the United States,

It is Hereby Stipulated and Agreed by and between the parties to this cause:

1. That the printed abstract of evidence filed by plaintiff at the trial of this suit is an agreed narrative statement of the pertinent evidence taken by the Secretary of Agriculture in the administrative hearing before him, except the indices printed at pages i to xi in Volume I and pages i to xi in Volume II and the marginal notes contained in Volume I and Volume II of the aforesaid abstract.

[fols. 1304-1305] 2. That the aforesaid indices and marginal notes contained in Volume I and Volume II of the abstract of evidence were objected to by counsel for the defendants at the trial of this suit on the grounds that the said indices and marginal notes were erroneous, misleading, and not a part of the evidence.

3. That the indices printed on pages i to xi of Volume I and pages i to xi of Volume II and the marginal notes contained in Volume I and Volume II of the abstract of evidence are not to be considered as a part of the record before the Supreme Court of the United States.

4. That the printed abstract of evidence filed in the trial court may be furnished to the Clerk of the Supreme Court of the United States for incorporation in the record in accordance with Rule 38, paragraph 7, of the Revised Rules of the Supreme Court of the United States.

Robert G. Bosworth, Norman A. Hutchinson, Attorneys for the Plaintiffs. Robert H. Jackson, Wendell Berge, Attorneys for the Defendants.

[fol. 1306] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSMISSION OF ORIGINAL EXHIBITS—Filed February 7, 1938

Whereas, the plaintiff in this cause is taking an appeal to the Supreme Court of the United States from the decree of the District Court herein, and desires to submit the original exhibits in the case and the stipulations entered into at the trial for examination by the Supreme Court as part of the record on appeal; and

Whereas, it is desired that either plaintiff or defendants may reproduce such of the exhibits herein as it or they may desire and have the same made a part of the record on appeal.

It is Hereby Stipulated and Agreed by and between the parties to this cause:

1. That all of the original exhibits herein, together with the stipulations entered into at the trial of this cause, may be sent up to the Supreme Court of the United States as [fols. 1307-1316] part of the record on appeal, and an order to that effect may enter.

2. That either party shall have the right to reproduce such of the exhibits or stipulations as it or they may elect, and have the same made a part of the transcript on appeal.

Dated February 2nd, 1938.

Robert G. Bosworth, Norman A. Hutchinson, Attorneys for Plaintiff. Thomas J. Morrissey, Attorneys for Defendants.

[fol. 1317] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF PROCEEDINGS OF DECEMBER 20, 1937, AND ORDER CONTINUING INJUNCTION—Filed February 11, 1938

Be it Remembered that on, towit, the 20th day of December, A. D. 1937, the same being one of the regular juridical days of the November Term, A. D. 1937, of said court, this cause came on for trial before the Honorable Sam G. Bratton, Alfred P. Murrah and J. Foster Symes, the plaintiff appearing by Robert G. Bosworth, Esq., its attorney, and the defendants appearing by James C. Wilson, Esq., Special Assistant to the Attorney General.

Judge Symes: Let the record show that in open court the Court makes these findings of fact and conclusions of law.

Mr. Bosworth: Plaintiff, The Denver Union Stock Yard Company, petitioner herein, excepts to the findings of fact and the entry thereof by this court in this cause, and particularly excepts to the findings numbered 8, 9, 11 to 21, inclusive, and finding numbered 23, for the reason said findings and each thereof are contrary to the evidence and to [fol. 1318] the weight of the evidence, and are contrary to law. Plaintiff further excepts to findings 17, 18 and 19 for the reason that the charge against yard traders there found proper creates discrimination and is discriminatory against shippers and other buyers on the market of plaintiff, is unwarranted, unjust, and cannot be collected. Plaintiff excepts to certain conclusions of law and their entry by the court, namely, conclusions Nos. 3, 4, 5, 6, 8, 9 and 10, for the reason that such conclusions of law and each thereof are and is contrary to law. The plaintiff desires to give notice of appeal to the Supreme Court of the United States, and prays that the preliminary injunction heretofore issued in this cause be continued for such time as to the court may seem proper, pending filing a petition for appeal and petition fixing terms of appeal as required by the judicial code. I may say I desire also to advise the court that I have received word from the Department of Justice, and they have no objection to the entry of the stay order pending the decision of the appeal upon posting an

additional bond to the extent of $40,000.00. Mr. Wilson of the Department is here, and can verify that.

Mr. Wilson: That is agreeable to the Department.

Judge Bratton: The exceptions of the plaintiff are allowed, and the provision in the decree dissolving the temporary injunction is stayed for a period of thirty days from this date.

[fols. 1319-1322] Reporter's certificate to foregoing transcript omitted in printing.

Approved.

—— ——, District Judge.

[fol. 1323] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO

In Equity, No. 10913.

THE DENVER UNION STOCK YARD COMPANY, a Corporation, Plaintiff,

v.

UNITED STATES OF AMERICA and SECRETARY OF AGRICULTURE, Defendants

Before BRATTON, Circuit Judge, and SYMES and MURRAH, District Judges.

OPINION—Filed October 8, 1937

SYMES, District Judge, delivered the opinion of the Court:

The Secretary of Agriculture, pursuant to the so-called Packers and Stockyards Act of 1921 (42 Stat. 159, 7 U. S. C. A., §§ 201-17 inclusive), entered an order February 17, 1937 prescribing maximum reasonable rates and charges to be collected by the plaintiff, The Denver Union Stock Yard Company, for services rendered at its stockyards in Denver. The plaintiff brought this action (authorized by § 217 of the same Act), to restrain the enforcement of said order. By agreement of parties an interlocutory injunction was

granted by this court on March 9, 1937, enjoining the enforcement of said order pending final hearing.

The constitutionality of the Act (supra) has been sustained. See Stafford v. Wallace, 258 U. S. 495. And § 217 grants us jurisdiction to test the fairness, etc., of an order of the Secretary such as is here involved. It provides that all provisions of law that have to do with the suspension, or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part of the orders of the Interstate Commerce Commission are made a part of, and applicable to, the so-called Packers and Stockyards Act. [fol. 1324] See § 24 of the Jud. Code (Tit. 28 U. S. C. A., § 41, subd. 27 and 28), as amended.

A previous order of the Secretary prescribing maximum reasonable rates and charges to be collected by the same stock yards company, dated July 28, 1931, was held invalid by this court. Denver Union Stock Yard Co. v. United States, 57 Fed. (2d) 735. The order now before us follows an order of inquiry and notice of hearing, dated November 8, 1934. The taking of evidence by the examiner was concluded July 3, 1935. The oral testimony covers 2300 pages and 118 exhibits containing 4000 pages were introduced. It indicates that the Secretary's findings were made only after a full and fair hearing. The procedure has been approved by this and other courts. American Commission Co. v. United States, 11, Fed. Supp. 965.

The Supreme Court has construed the Act in question in the St. Joseph Stock Yards Co. case, 298 U. S. 38 and defined the scope and limits of the judicial review permitted, holding that rate fixing is a legislative act, in the exercise of which there is broad discretion; that the Federal courts do not sit as boards of revision to substitute their judgment for that of the Congress or its agents as to matters within the province of either; that when, as in the Act in question, the Congress appoints an agent—i. e., the Secretary of Agriculture—to act within the sphere of legislative authority, it may endow the latter with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according the parties a fair hearing and acting upon evidence and not arbitrarily; that (p. 51):

"* * * the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to sup-

port the findings, and the question of the weight of the evidence in determining the issues of fact lies with the legislative agency acting within its statutory authority."

The Court points out, however, the constitutional limitations on rate-making power that prohibit the deprivation of property without due process of law, or the taking of [fol. 1325] private property for public use without just compensation, both of which questions are subject to an independent judicial review., See also Judge McDermott's discussion in Denver Union Stock Yard Co. v. United States, 57 Fed. (2d) 735.

With this in mind we consider seriatim the particular errors charged by the plaintiff.

1: That the Secretary excluded from the rate base the value of the railroad trackage of the plaintiff, the loading and unloading docks, pens and alleys adjacent thereto, together with the 8.985 acres of land whereon the said facilities are situated.

These facilities are owned by the plaintiff, but leased to the railroads serving the stockyards, under an agreement whereby the railroads pay the plaintiff for the use of the property, cost of maintenance, repairs and renewals of tracks, and taxes and assessments.

Sec. 201 of the Packers and Stockyards Act, supra, defines a stockyard service as

"Services or facilities furnished at a stockyard in connection with the receiving * * *, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce of livestock."

It may be assumed that railroad facilities are indispensable, or at least highly desirable and convenient for the operation of a modern stockyards; for this reason it is claimed that the value of the above property belonging to the Stock Yard Company, should be included in the rate base. The Secretary excluded these items, because according to subsection 5 of § 15 of the Interstate Commerce Act, the carrier is obliged to deliver livestock at destination free off cars in a suitable place where the consignee can take delivery, all without extra charge, and accordingly held them to be transportation and not yard facilities.

The locomotives and transportation equipment, etc., essential to the performance of this service are furnished by

the several railroads, yet plaintiff claims the right to [fol. 1326] charge for it. If this is a stockyard service, the inquiry naturally arises—where does it begin? By a parity of reasoning it could be extended to include the transportation of livestock from the farm or range to the stockyard.

In Covington Stock-Yards Co. v. Keith, 139 U. S. 128, it was held that a railroad company is required to provide all facilities for the discharging of livestock after it reaches the place to which it is consigned and that the full performance of this public duty requires the aid of enclosed yards, into which the stock can be safely and effectively delivered. And furthermore that a special charge cannot be made in addition to the transportation charge for merely receiving or delivering such stock in and through yards provided for that purpose.

This case was affirmed in United States v. Union Stock Yard, 226 U. S. 286, which calls attention to the provisions of the Interstate Commerce Commission Act that all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of persons or property * * * and grounds used or necessary in the transportation or delivery of any of said property, are transportation facilities; the test being the character of the service rendered.

In Allied Packers v. Atchison, Topeka & Santa Fe Railroad, 161 I. C. C. 641, the Commission held (p. 643), the unloading of stock into the unloading chutes at a stockyard even though performed by stockyard employees to be subject to the jurisdiction of the Commission and (p. 644), that the assessment of a charge for the use of stockyard facilities cannot deprive the Commission of its jurisdiction. Likewise in Livestock, Southern Territory Rates, 171 I. C. C. 721, at p. 725, it said:

"The law requires carriers to bear the expense of loading and unloading livestock destined or received at public stockyards * * * whereas practically all other carload freight is loaded and unloaded by the shipper at his expense."

See also A. T. & S. F. v. U. S., 295 U. S. 193.

The fact that the railroads run into the plaintiff's yards [fol. 1327] and discharge cattle directly into these pens,

from where consignees take them, lends no weight to plaintiff's argument. It offers many services to its customers, but it is not, and cannot be claimed, that they thereby become a stockyard facility as defined in § 201 (supra); nor does any part of the transportation to and from the plaintiff's plant come within the definition of a "stockyard", which is a public market

"consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules or goats are received, held, or kept for sale *or* shipment in commerce." § 202, Tit. 7, U. S. C. A.

Furthermore there is no escape from the proposition that the transportation the shipper pays for includes what the statute says it must; the delivery at public stockyards into suitable pens. That service is covered by the rate paid to the railroad and to permit the plaintiff to charge for it would constitute a double impost. The railroads pay the plaintiff for loading and unloading livestock, which they would hardly do were it a stockyards service and we take notice that the Commission include in the rate base of a railroad tracks and lands leased and used and useful in the transportation service. Livestock Loaded and Unloaded at Chicago, 213 I. C. C. 330.

We think the Secretary is correct in this matter.

2: That the exclusion of the so-called stock show property, consisting of the Stadium, sales pavilion, etc., from the rate base is arbitrary, contrary to the law and the evidence, and confiscatory.

These structures and the 2.633 acres of land upon which they are situated are leased to and operated by a separate corporation which holds an annual livestock show. The expenses of the show are borne in part by public subscription and the Stockyards Company pays the taxes. At the annual show held in January large quantities of purebred livestock are received, sold and handled at the yards by reason thereof. The facilities offered are no more than needed for the purpose.

There is considerable evidence that the show is a benefit [fol. 1328] to the industry as a whole, as distinguished from the Denver yards in particular, and tends to improve herds and to advertise Denver as a good cattle market.

The Government, admitting that some livestock may be attracted to the Denver yards by the show, says it would all filter through this market at other times and does not increase the total income of the plaintiff. Attention is also called to the fact that the show lasts for a week only and the lessee, the Western Stock Show Association, does not pretend to furnish any stockyard facilities. But even if it is a stock show facility, it is not available to patrons during the remaining 51 weeks of the year, and a very small proportion of the livestock handled uses these buildings even during the week of the show. Were we charged with the determination of this factual question, we might, because of the indirect benefits to the industry as a whole resulting from the stock show, feel the question to be a debatable one. But there is substantial evidence pro and con on this issue; hence we are not justified in overruling the Secretary, especially where, as in this instance, a stock show is not an indispensable facility and its exclusion does not affect the value of the property as an integrated and established enterprise. Los Angeles Gas Co. v. R. R. Comm'n, 289 U. S. 287.

3: That the Secretary erred in not including in plaintiff's rate base an allowance of not less than $325,000 for going concern value of plaintiff's business and property and that his findings to this extent are arbitrary, contrary to the law and the evidence, and confiscatory.

The Secretary recognized that the respondent stockyard was a going concern with a long history of efficient and economical management and financial success. Likewise he calls attention to the fact that it has never defaulted on its bonds and has paid dividends on the preferred stock continuously since 1917 and on the common stock since 1913, [fol. 1329] with the exception of three years.

No separate allowance for going concern value was made by the Secretary, nor is one necessary provided it is included in valuing the property upon which the owner has a right to a fair return. Des Moines Gas Co. v. Des Moines, 238 U. S. 153.

The Los Angeles Gas Company case, 289 U. S. (supra), is the latest expression of the Supreme Court on this valuation item. Beginning at p. 313, the Court affirms the Des Moines Gas Company case (supra), and makes a distinction between so-called "good-will" and going concern value, saying good-will is an

" 'element of value which inheres in the fixed and favorable consideration of customers, arising from an established and well-known and well-conducted business.' "

Which,

"as the Court has repeatedly said, is not to be considered in determining whether rates fixed for public service corporations are confiscatory."

Nor are past losses or profits to be considered.

The opinion codifies the authorities on this subject, saying: That it is the appropriate task of the commission to determine the value of the property affected by the rates it fixes, as that of an integrated operating enterprise and it is the function of the court in deciding whether rates are confiscatory, not to lay down a formula, much less to prescribe an arbitrary allowance, but to examine the result of the legislative action in order to determine whether its total effect is to deny to the owner of the property a fair return for its use. And referring to the Cedar Rapids Gas Company case, 223 U. S. 655, the opinion says, the fact "that the plant was in successful operation," had expressly been taken into account and a value fixed, which "considerably exceeded its cost" and hence the Court found no warrant for changing the result. And finally that the inquiry must be whether the evidence requires the conclusion that by reason of the inadequacy of the valuation the result is confiscation.

[fol. 1330] See also Lincoln Gas Co. v. Lincoln, 250 U. S. 256, where after questioning the propriety of the master's treatment of going value, but noting compensatory errors in favor of the complainant, the Court said it could not conclude that the master was wrong in holding that the ordinance was not shown to be confiscatory.

The Government's case on valuation is made principally by the witness Zelinski, an employee of the Department and charged with that work since 1934. His qualifications are recited at length in the record and include similar duties performed in other stockyard cases. His valuation is based upon material in place and upon a property able and willing to function as a stockyard and a business earning an income. As to particular details; he allowed interest during construction on the structural property, considered such items as proximity to highways, railroads, freedom from

floods, access to water supply and other city services, its favorable loc tion in regard to related industries, the effect of the city zoning ordinance, and that the highest and best use of the particular area in question is for stockyards. He likewise testified that he valued it higher because of its availability for a stockyard and as an assembled tract as distinguished from the several tracts in separate ownership. He also included construction overhead, general overhead, and added five per cent in addition for omissions and contingencies, omitting, however, organization expense. He gave consideration to the peculiar climatic conditions of Denver as affecting rot, rust and decay. The Secretary added to Mr. Zelinski's figures $30,267 to cover one year's interest on the used and useful land during the construction period and added $139,300 for working capital. In conclusion the Secretary arrived at $2,792,700 as the rate base upon which the respondent is entitled to earn a fair return.

We think the record does not support the respondent's contention that Mr. Zelinski valued the land as naked land, [fol. 1331] merely because he says he considered it "stripped of all improvements." He, like the respondent's experts, used several tests of valuation, such as previous sales, assessed valuation and the other formulas. His staff listed every bit of structural property, even down to the number of two by fours in the pens, squares of paving, etc. An honest attempt was made to determine labor, material and business costs as of the date of the inventory, January 1, 1935, which was checked against a wealth of cost and price data maintained by the Department at its Kansas City office. Nor were such items as engineer and architect's fees, one year's taxes, legal fees, general salaries, expense during construction overlooked.

It is apparent from Mr. Hyder's interesting dissertation on going concern value that unconsciously perhaps as plaintiff's expert, he included certain intangible elements that we may not consider, such for instance as good-will, etc. He allowed $350,000 as a minimum going concern value, computing it at $10.00 per car for an admitted yearly average of 35,000 cars of livestock. A formula of this nature has no support in the record. He says it is similar in principle to one used occasionally for measuring the going concern or good-will value of an established business for

the purposes of sale. When applied to the situation here presented, we think it arbitrary and condemned by the Los Angeles case (supra).

The authorities do not justify the inclusion in the rate base the cost of land donated by the plaintiff to packing plants and railroad companies for so-called development of business, the cost of which, with carrying charges to the date of the hearing, is over $325,000. The benefits, if any, of such largesse are speculative and have not been identified. Nor are they part of that element of value that pertains to an assembled and established plant doing business and earning money as defined in the Des Moines Gas Company case, 238 U. S. (supra). The well-deserved success that plaintiff has enjoyed is not the result of such artificial [fol. 1332] stimuli, but rather to efficient management and financing and the advantages that Denver and the surrounding territory offer to an enterprise of this kind.

Had the Secretary seen fit to value going concern value as a separate item it would have been more accurate and simplified our task. A careful examination of the record, however, discloses that it was fully considered and that the figure the Secretary finds the respondent is entitled to earn a fair return on is larger as a result thereof. The plaintiff has not made the convincing showing of error required by the St. Joseph case, 298 U. S. 38, at p. 53.

4. The plaintiff charges that the Secretary's findings on value of plaintiff's land are unlawful in that the finding of $536,825 for used and useful land is not supported by substantial evidence and is therefore arbitrary and confiscatory.

The Secretary adopted the land valuations of his own witness Zelinski, who valued all the plaintiff's lands at $724,924, whereas the witnesses for the company—Messrs. Eppich, Newcomb and Ivins—arrived at $1,645,552 for the same property.

In their brief counsel for plaintiff concede the experts on both sides are well qualified and argue that this large discrepancy in their figures must be upon the basis of difference in qualifications or in method pursued. Also that the method followed by their board of appraisal and the elements of value considered are identical with those of the Government witness Zelinski. The argument is grounded on the alleged lack of experience of the Government wit-

ness. Zelinski's previous lack of familiarity with land valuations in and about Denver is as immaterial to this discussion as is the fact that the three experts on the other side never valued any other stockyards before, either in Denver or elsewhere. It is apparent that the company's three experts took into consideration the so-called "stockyards value" of the property, instead of the fair average market value of similar land without considering the anticipated use. This is contrary to the rule in the Minnesota Rate [fol. 1333] Cases, 230 U. S. 352. Mr. Zelinski's experience and qualifications as a land appraiser and the methods pursued in this matter, are detailed in the record and lead us to the same conclusion in respect thereto as the court came to in Union Stock Yards Co. of Omaha v. U. S., 9 Fed. Supp. 864. He was also accepted as an expert in St. Joseph Stock Yards Co. v. U. S., 11 Fed. Supp. 322. Our experience in valuation cases might justify us in taking judicial notice of the tendency of local appraisers to give a higher value to lands than others. The most we can say is that the Secretary adopted the lowest valuation of a qualified expert. As it was within his discretion so to do, we cannot interfere.

Likewise the discussion of the valuation of structures is simplified by the plaintiff's admission that Mr. Zelinski followed the same methods as their experts and the statement of Mr. Hyder that the inventory upon which the cost of reproduction new is fixed and the resulting figures developing total cost of reproduction new as established by Mr. Zelinski, was substantially correct and that the variations from his figures are no more than would be anticipated from equally competent engineers.

5. That the order of the Secretary requires the plaintiff to charge and collect from yard traders a rate of one-half the specified yardage charge on cattle, calves and hogs, slightly less than one-half on sheep and goats, and the full charge on horses, mules and pure-bred bulls.

The petitioner asserts this is arbitrary and unsupported by the evidence, an invasion of the function of management, and therefore confiscatory and void.

The Secretary's action is based upon the finding that the failure to assess a proper charge against yard traders is a discriminatory practice forbidden by the Act and unless such charge is made the balance of the rate schedule will

not produce the return to which the Stock Yard Company is entitled.

The Secretary finds that livestock purchased and disposed [fol. 1334] of by yard traders occupies a considerable portion of respondent's yards—approximately 160 pens—together with adjacent alleys. It is undisputed that under present conditions trader livestock makes no contribution to the support of the yards, other than the profit it may pay on the hay and grain purchased. The Secretary in his five-year recapitulation of the volume of business 1930-34 inclusive, shows that 55,405 head of cattle out of a total of 367,822 were sold and reweighed for the purposes of sale. And that during this five-year period yardage was paid on 89% of cattle arrivals and 82% of calf arrivals. Manifestly livestock using the yards but not paying therefor casts a burden upon those that do pay, irrespective of the reason. Yard traders purchase livestock—mostly cattle—from commission men and either sell in this market or reship to other outlets. On stock shipped away from this market they pay no yardage, the charges under discussion being applicable only to stock sold here. So under the practice that now obtains a considerable part of the stockyards property is used, maintained, and numerous expenses incurred in rendering free service to this class of patrons. Necessarily the charge to the other patrons must be that much greater if plaintiff is to earn a reasonable return. The present income of the Stock Yards Company represents, almost entirely, commissions upon sales at the yards paid by shippers; that is to say by ranchers and farmers scattered throughout the West who use the yards only occasionally. They have an investment in a ranch or in a herd, while the yard trader has no capital investment, as he makes free use of the respondent's plant for and as his place of business.

Respondent's own witnesses testified that the producer; that is the shipper, has paid for this service in the marketing charge assessed against him by the Stock Yard Company. It follows, therefore, that this is a discriminatory practice and results in the yard trader getting for nothing [fol. 1335] a service that all other patrons of the yard pay for. And to say that this discrimination is justified because the trader is a desirable part of the market machin-

ery, helps maintain prices, and brings about a prompt absorption of offerings on the market, is no reason why he should not pay his proportionate share of the cost of conducting the market.

Public utilities should occupy a disinterested position, charging all alike for the same service. A similar charge was upheld in the Omaha and St. Joseph Stock Yards cases (Union Stock Yards Co. of Omaha (supra), at pp. 879-81, and St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38, at p. 70). In the Omaha case the Court declined to follow the opinion in Denver Union Stock Yard Co. v. U. S. (supra), on this question.

6. The scope of the Judicial Review in this Case.

Under this heading we can dispose of the remaining questions. Plaintiff, in support of its several objections to the Secretary's order, charges generally, confiscation, the deprivation of its property without due process of law; that the decision of the Secretary is not conclusive, and the court must determine the issues upon its own independent judgment, both as to the law and the facts.

It's axiomatic of course that due process means the Secretary's finding must be based upon substantial evidence. He must not act arbitrarily and the respondent must have a fair hearing. To properly raise constitutional objections, however, it is not sufficient to plead them simply as legal conclusions. The facts pleaded in the bill must disclose a serious question of unconstitutionality. Ex Parte Poresky, 290 U. S. 30.

Spielman Motor Co. v. Dodge, District Attorney, 295 U. S. 89, holds that general allegations of irreparable damage, due process of law, etc., are not sufficient in the absence of a statement of facts sufficient to warrant such conclusion. One relying upon the 14th Amendment, must point out specifically what specific right of property is affected and why its use and enjoyment may not be regulated. Hall v. [fol. 1336] Geiger-Jones Co., 242 U. S. 539. And

"Suitors may not resort to a court of equity to restrain a threatened act merely because it is illegal or transcends constitutional powers. They must show that the act complained of will inflict upon them some irreparable injury." United Gas Co. v. R. R. Comm'n., 278 U. S. 300.

See also American Commission Co. v. United States (supra), p. 968, and cases cited.

Likewise we must bear in mind the statement in Northern Pac. Ry. v. North Dakota, 236 U. S. 585, at p. 598, that:

"The legislature, undoubtedly, has a wide range of discretion in the exercise of the power to prescribe reasonable charges," and

P. 599:

"Nor is its authority hampered by the necessity of establishing such minute distinctions that the effective exercise of the rate-making power becomes impossible."

This, together with the rule of the Los Angeles Gas case, 289 U. S. heretofore stated and this language, p. 305, of that case, that

"The judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory."

Forces the conclusion that we may not interfere with the order of the Secretary unless we are convinced that the valuation and rates prescribed as a whole result in an inadequate return.

We cannot take seriously the plaintiff's allegation that its property has been confiscated simply because the Secretary eliminated from the expense account "dues, donations and subscriptions" that during the past five years averaged from three to four thousand dollars a year, and limited this item to $300.00 a year, the amount of the contributions thought to be actually beneficial to the Stock Yard Company employees and patrons.

Next; having found the fair value of plaintiff's property used and useful in rendering stockyard's services to be $2,792,681, the Secretary determined that a return of 6½% upon that amount to be reasonable. This rate has been upheld in Dayton Power & Light Co. v. Public Utilities Comm'n of Ohio, 292 U. S. 290, and Los Angeles Gas case (supra), p. 319. The Secretary's findings on this point [fol. 1337] were based upon the evidence of an experienced investigator, Dr. Dozier.

Dr. Dozier has testified in a great many rate cases before the Department as an expert on the rate of return and his exhaustive studies on this question are to be found in Govt. Ex. 45. The plaintiff's only witness was Mr. Arthur Bosworth, a local investment banker of high standing, and a stockholder and member of petitioner's board of directors. We take judicial notice that the plaintiff enjoys a monopoly with no prospect of competition. Also we may note the fall in the rate of return on conservative investments over the past five or six years. Atchison, Topeka & Santa Fe Ry. Co. v. U. S., 284 U. S. 248, at p. 260.

The Supreme Court in Tagg Bros. & Moorhead v. U. S., 280 U. S. 420, said at p. 443:

"A proceeding under § 316 of the Packers and Stockyards Act is a judicial review, not a trial de novo. The validity of an order of the Secretary * * * must be determined upon the record of the proceedings before him, —save as there may be an exception of issues presenting claims of constitutional right."

A careful review of the record convinces us that the Secretary has not exceeded his discretion; that each finding is well within the limits established by substantial evidence. So it necessarily follows that the order inflicts no irreparable injury. The plaintiff had a full hearing before the Secretary and this court as well. As stated in the previous case, Denver Union Stock Yard Co. v. U. S. 57 Fed. (2d) (supra), the legal presumption that the findings of the Secretary are correct

"is strengthened in this case by the fact that the report of the Secretary bears internal evidence of the careful investigation made by him, and his disposition to be fair."

The same question is involved in these two cases and have been litigated for over seven years. Being of the opinion that the Secretary's order is valid, we see no reason for further delay in its enforcement. It may of course upon good cause being shown, be modified by the Secretary.

[fols. 1338-1339] It follows that the bill should be dismissed and defendant have its costs.

J. Foster Symes, District Judge.

September 23, 1937.

[fol. 1339a] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING THE TIME WITHIN WHICH TO FILE RECORD ON APPEAL IN SUPREME COURT OF THE UNITED STATES—Filed February 2, 1938

It appearing that the record in this case is voluminous and that additional time is necessary to afford all parties opportunity to check the record and agree on the final form thereof,

It is ordered that the time be and the same is hereby extended to and including February 15, 1938, within which the record in this case may be filed and the cause docketed in the Supreme Court of the United States.

Sam G. Bratton, U. S. Circuit Judge. J. Foster Symes, U. S. D. J. Alfred P. Murrah, U. S. District Judge.

Dated January —, 1938.

All parties consent to the entry of the above order by the United States District Court for the District of Colorado, January 25, 1938.

Robert G. Bosworth, Counsel for Plaintiff. Robert H. Jackson, Assistant Attorney General Counsel for Defendants. Wendell Berge, Special Assistant to the Attorney General Counsel for Defendants.

[fol. 1340] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed February 16, 1938

Comes now The Denver Union Stock Yard Company, the appellant in the above entitled cause, and states that the points upon which it intends to rely in this Court in this case are as follows:

That the Court erred:

1. In finding in paragraph 6 of the Findings of Fact herein that of the 130.57 acres of land owned by the peti-

tioner, appellant herein, 46.779 acres thereof are not used and useful in the rendition of stockyards services, and in excluding the value of said land from petitioner's rate base, said findings being contrary to the evidence, unsupported by substantial evidence, contrary to law, confiscate the property of petitioner and deprive petitioner of its property [fol. 1341] without due process of law in violation of the fifth amendment to the Constitution of the United States, in that 8.985 acres and the value thereof thus excluded are utilized by petitioner for the location of its switch tracks, its loading and unloading docks and chutes, its holding pens and a portion of the alley bordering such pens, and 2.633 acres and the value thereof thus excluded are devoted to and utilized for stock show purposes, all said 11.618 acres thus erroneously excluded being used in the handling of livestock in commerce and as such defined to be a stockyard service or facility by section 301 of the Packers & Stockyards Act, 1921 (7 U.S.C.A. S 201).

2. In finding in paragraph 8 of the Findings of Fact herein that the 8.985 acres and the structures thereon and enumerated in said Findings, are not used and useful in the rendition of stockyard services for the reason that said finding is contrary to the evidence, unsupported by substantial evidence and contrary to law, confiscate the property of petitioner and deprive petitioner of its property without due process of law in violation of the fifth amendment to the Constitution of the United States, in that each and all of said lands and facilities are owned by petitioner and used in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivering, shipment, weighing or handling in commerce of livestock.

3. In determining in paragraph 8 of the Findings of Fact that "The loading and unloading docks, chutes and pens which are leased by the railroads from petitioner are used [fol. 1342] exclusively for handling livestock in the course of transportation to and from petitioner's stockyards" for the reason that there is no evidence of record to the effect that such facilities are leased by the railroads, or that all of them are used exclusively for handling livestock in the course of transportation from petitioner's stockyards.

4. In said Finding No. 8 in determining and finding that the amounts of money paid by the carriers to petitioner on the per car basis for performing loading and unloading services are absorbed by the railroads or are included in the freight rates, for the reason that said finding is contrary to the evidence and contrary to law.

5. In failing and refusing to enter suggested finding entitled "Stock Show Property" requested by petitioner and on the contrary making and entering Findings numbers 10, 11 and 12. In finding in paragraphs 9 to 12, inclusive, of the Findings of Fact herein, that the 2.633 acres whereon are situated the stadium, sales pavilion and certain other buildings used in connection with the stock show are not used and useful in rendering stockyard services, that the exclusion of said lands and structures does not affect the value of petitioner's property as an integrated and established enterprise, that whatever benefits result to the livestock industry from the stock show are indirect benefits to the industry as a whole, and that petitioner does not carry on any of its business in the said buildings, said Findings and the assigned grounds therefor being contrary to the evidence, un- [fol. 1343] supported by substantial evidence and contrary to law and resulting in confiscation of petitioner's property without due process of law contrary to the fifth amendment to the Constitution of the United States.

6. In finding, in paragraph 13 of the Findings of Fact herein, that "The fair and reasonable value of all of petitioner's land is $724,974.00 and the value of petitioner's used and useful land is $536,825", said findings being unsupported by substantial evidence.

7. In finding in paragraph 14 of the Findings of Fact herein, that 80.545% is the condition per cent of petitioner's structures and equipment and that $1,706,717.14 is the fair and reasonable value of said structures and equipment, said Findings being contrary to the evidence, unsupported by substantial evidence and arbitrary.

8. In failing and refusing to enter the suggested Finding of Fact entitled "Going Concern Value" requested by petitioner, and on the contrary making and entering the Finding contained in paragraph 15. In finding in paragraph 15 of the Findings of Fact that, "an allowance for going concern value is included in the total rate base upon

which petitioner is permitted to earn a reasonable return", for the reason that said Finding is contrary to the evidence and contrary to law.

9. In finding in paragraph 15 that $2,792,700.00 is a fair rate base upon which petitioner is entitled to earn a fair return, for the reason that said Finding is unsupported by substantial evidence, is contrary to the evidence and is contrary to law.

[fol. 1344] 10. In finding in paragraph 16 that 6½% is a fair rate of return on the rate base and valuation of $2,792,700 for the reason that said Finding is not supported by substantial evidence, is discriminatory and is contrary to law.

11. In failing and refusing to enter suggested Finding entitled "The Charge to Yard Traders" requested by petitioner, and on the contrary, making and entering the Findings contained in paragraphs 17 to 19, inclusive, that substantially one-half the rates and charges imposed upon those who sent their livestock to market for sale is a fair and reasonable charge for the services rendered and facilities furnished to yard traders or speculators, and in particular the Findings:

(a) That petitioner maintains and sets aside a large section of its valuable property for use of yard traders or speculators;

(b) That it is unjust, discriminatory and unreasonable so to do;

(c) That petitioner incurs numerous expenses in rendering of stockyard services to this class of patrons without charge, and then remunerates itself by increase in charges on other patrons;

(d) That traders or speculators ought to pay a charge;

all of said Findings being contrary to the evidence, wholly unsupported by any substantial evidence, authorize an unwarranted interference with the right of management and are contrary to law.

[fol. 1345] 12. In failing and refusing to enter suggested Finding entitled "Dues and Donations" requested by petitioner and on the contrary making and entering the Finding

contained in paragraph 20 that $300.00 is shown to be the annual amount contributed by petitioner to charities and community activities which benefit petitioner's employees or patrons, and that $325.00 is a proper sum to cover into rates for this item, said refusal and said Finding being contrary to the evidence, contrary to law, arbitrary, confiscatory and depriving petitioner of its property without due process of law in that said Findings as entered by the Court excludes items of business expense, prevents petitioner from bearing its fair share of community obligations and constitutes an unwarranted invasion and interference with the lawful functions of management.

13. In failing and refusing to enter a Finding substantially in accord with suggested Finding entitled "Packers' and Stockyards' Administration Expense" requested by petitioner and on the contrary, finding in paragraph 21 of the Findings of Fact herein that "$1200 annually is a proper amount to cover into rates for future expenses on account of hearings under the Packers and Stockyards Act", for the reason that said Finding as entered fails to amortize over a reasonable future period or at all the costs and expenses of the present litigation, fails to recognize and take into account the fact that rate investigations are of necessity recurrent, is contrary to the evidence, unsupported by the evidence, arbitrary, contrary to law and operates to confiscate petitioner's property.

[fol. 1346] 14. In finding in paragraph 23 of the Findings of Fact herein that "Over a period of time in the future the rates prescribed by the Secretary's order will yield an amount sufficient to pay all reasonable costs incurred in rendering stockyard services plus a return of 6½%, or more, on the fair value of petitioner's property used and useful in rendering stockyard services," for the reason that said finding is contrary to the evidence, unsupported by substantial evidence, contrary to law and results in confiscation of petitioner's property without due process of law in violation of the fifth amendment to the Constitution of the United States, and for the further reason that the basic findings as to valuation, rate of return and proper expense upon which the general Finding herein complained of is grounded are erroneous as hereinbefore set forth, and the general Finding is for the same reasons erroneous.

15. In concluding, as a matter of law, in paragraph 3 of the Conclusions of Law entered herein, that "The Secretary's order does not confiscate petitioner's property but is fair, reasonable and lawful," for the reason that said conclusion is contrary to the law and to the evidence.

16. In concluding, as a matter of law, in paragraph 4 of the Conclusions of Law entered by the Court herein that "The method used by the Secretary in determining that petitioner's rates and charges were unreasonable and unlawful and in prescribing and fixing reasonable and lawful rates and charges for the future, was not arbitrary or unreasonable but was lawful", for the reason that said conclusion is contrary to law and to the evidence.

[fol. 1347] 17. In failing and refusing to enter suggested Conclusion of Law entitled "Railroad and Loading Facilities" requested by petitioner, and on the contrary making and entering the conclusion of law as paragraph 5 thereof that the railroad trackage and other enumerated structures, together with the land whereon the same are situated, are not used and useful in rendering stockyard services because the services in connection with which this property is used are transportation services, because said conclusion is contrary to the law and to the evidence.

18. In failing and refusing to enter suggested Conclusion of Law entitled "Stock Show Property" requested by petitioner, but on the contrary making and entering the conclusion of law in paragraph 6 thereof concluding that the stock show property and land is not used and useful in rendering stockyard services as defined in the Act, for the reason that said conclusion is contrary to the law and to the evidence.

19. In concluding as a matter of law, in paragraph 8 of the Conclusions of Law herein, that the order of the Secretary is fair and reasonable, that the yardage charges (otherwise and properly known as marketing charges) are fair as applied to the several species of livestock, and that the prescribed rates and findings of the Secretary are not arbitrary or unreasonable, are supported by the weight of the evidence and as a whole are lawful, for the reason that said conclusion is contrary to the law and to the evidence.

[fol. 1348] 20. In concluding as a matter of law, in paragraph 9 of the Conclusions of Law herein, that "The rates prescribed by the Secretary will yield a fair return upon the fair value of all of its property which is used and useful in rendering stockyard services, and do not confiscate petitioner's property" for the reason that said Conclusion is contrary to the law and to the evidence.

21. In determining in paragraph 10 of the Conclusions of Law that petitioner's cause is without equity, the temporary injunction heretofore granted should be dissolved, a permanent injunction denied and the petition be dismissed with costs to the defendants.

22. In denying the petition of the petitioner for a permanent injunction herein.

23. In entering final judgment and decree dismissing petitioner's petition.

And the appellant further states that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

Title of Paper	Record Page
Petition	1
Exhibit "A" attached to Petition	23
Exhibit "B" attached to Petition	149
Exhibit "C" attached to Petition	227
Interlocutory injunction	358
[fol. 1349] Answer	360
Stipulations entered into at the trial pertaining to:	
(a) Results of the application of Secretary's rate order to 1935 and 1936 business	368
(b) Expenses incurred by plaintiff in this rate matter	375
(c) Comparison of income during stock show with weeks immediately prior and subsequent thereto	377
Abstract of evidence, Volumes I and II	382
Opinion of the Court	1323
Suggested findings of fact and conclusions of law tendered by plaintiff	1236
Suggested findings of fact and conclusions of law tendered by defendants	1249

Robert G. Bosworth, Norman A. Hutchinson, Winston S. Howard, Counsel for Appellant.

Service acknowledged this 14 day of February, 1938.
Thomas J. Morrissey, Counsel for Appellees.

[fol. 1350] [File endorsement omitted.]

[fol. 1351] IN SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLEES OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed February 23, 1938

The United States of America and the Secretary of Agriculture, the appellees in the above entitled cause, hereby designate the following parts of the record which they think material in addition to the parts of the record set forth in the statement filed by appellant herein pursuant to Paragraph 9 of Supreme Court Rule 13, viz.:

Golden W. Bell, Acting Solicitor General.

Endorsed on cover: Enter Robert G. Bosworth. File No. 42,279. Colorado D. C. U. S. Term No. 798. The Denver Union Stock Yard Company, appellant, vs. The United States of America and Secretary of Agriculture. Filed February 14, 1938. Term No. 798, O. T., 1937.

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